IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-319

AVIS RENT A CAR SYSTEM, INC. AND
CHRYSLER LEASING CORPORATION,
Petitioners,

vs.

CITY OF CHICAGO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Avis Rent A Car System, Inc. and Chrysler Leasing Corporation petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois entered in this case on April 3, 1978.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois (App. A) is not yet reported in the official reports, but is reported at 375 N. E. 2d 1285. The opinion of the Illinois Appellate Court (App. B) is reported at 38 Ill. App. 3d 835, 349 N. E. 2d 902. The order and opinion of the Illinois Circuit Court (App. C) are unreported.

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered on April 3, 1978. A timely petition for rehearing was denied on May 26, 1978. (App. A, p. A17.) This Court's jurisdiction is invoked under 28 U. S. C. § 1257(3).

ORDINANCE INVOLVED.

Chapter 27, Section 364(a) of the Municipal Code of the City of Chicago provides:

> "Presumptions: Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor."

QUESTIONS PRESENTED.

1. Whether the due process clause of the Fourteenth Amendment of the Constitution is violated by municipal ordinances which create the "substantive offense" of registered ownership of vehicles tagged for parking violations and which impose strict, vicarious, criminal or quasi-criminal liability upon registered owners of vehicles for parking violations committed by others and which preclude the defendant registered owners, which are car rental companies, from showing (1) that they merely rent the vehicles to strangers; (2) that they have no "responsible relation" to the offense charged and no power to "prevent or correct" the violation; and (3) that the imposition of vicarious liability upon them does not and could not serve a regulatory purpose, but on the contrary, merely encourages renters of cars to park illegally.

2. Whether the decision below, holding that the Chicago ordinance described above does not offend due process, is in conflict with the principles established by this Court with respect

to "generally disfavored" strict liability offenses. *United States* v. *United States Gypsum Company*, 46 U. S. L. W. 4937 (U. S. June 29, 1978); *United States* v. *Park*, 421 U. S. 658 (1975); *Morissette* v. *United States*, 342 U. S. 246 (1952); and *United States* v. *Dotterweich*, 320 U. S. 277 (1943).

STATEMENT OF THE CASE.

Introductory.

This case presents the question of the constitutionality of an ordinance adopted by the City of Chicago which, as construed by the Supreme Court of Illinois, imposes "strict", "vicarious", "quasi-criminal" liability upon petitioners for parking violations committed by persons operating rented vehicles registered in the names of the petitioners. This liability is imposed on petitioners solely by reason of the fact that they are the registered owners of the vehicles.

Although the ordinance is couched in presumptive terms,[1] the Illinois Supreme Court held that it creates a "substantive offense", that is, the offense of ownership of a vehicle which is illegally parked. (App. A, pp. A9, 11.) The court held that it is "irrelevant" to show that the renter and not the car rental company was in possession and control of the vehicle; that the rental company had no authority with respect to the renter's custody or operation of the vehicle; that the rental company had no possible means to prevent or correct the violation; or that the rental company had no possible way of causing the culpable person to reimburse the company for the assessed penalty or otherwise to aid in accomplishing the regulatory purpose of the parking regulations.

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1. The ordinance provides:
"Presumptions: Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor." (Chicago Municipal Code, ch. 27, sec. 364(a).)

As the Illinois Supreme Court construed and applied the ordinance, these facts are "irrelevant to the substantive offense" (App. A, p. A9) created by the ordinance and would not constitute a defense to the "quasi-criminal" charge against petitioners. The offense, as the court defined it, is simply the ownership of a vehicle which someone has allegedly parked overtime or otherwise in violation of traffic regulations.

The net effect is that the ordinance, as construed, provides Chicago with an easy method of raising revenue by collecting parking fines from car rental companies. No effort is made by the police to pursue the real violators of the traffic regulations although means are available.[2] In fact, the drivers of the cars are given a license to park anywhere, for as long as they choose, without fear of penalties.

The petition in this case seeks review of a declaratory judgment rendered by the Supreme Court of Illinois. The three defendant companies[3] were charged in the complaint with an aggregate of 13,267 parking violations for a single year (1966) involving penalties totalling $199,005. (Amended Complaint, App. D.) However, the aggregate potential liability arising from the decision below is many times that amount. Notices of alleged violations for years subsequent to 1966 have been held in abeyance pending the outcome of the present proceeding. Assuming only a number of violations for later years no greater than in 1966, the claims against the defendants based on the Chicago ordinance would be more than $2,000,000. For years since 1974 the amounts are even larger because the fines for parking violations have been doubled. (See *infra*, p. 11, n. 14.) The liabilities involved in this case are far greater still when the effect of similar ordinances elsewhere is considered.

2. An Illinois statute requires car rental companies to supply the police with the names and addresses of renters. *Ill. Rev. Stat.* 1977, ch. 95½, par. 11-1305(a).

3. Hertz Commercial Leasing Corporation, one of the three defendants, is filing a separate petition to this Court.

Petitioners operate throughout the nation. Many municipalities have ordinances identical with or closely similar to the ordinance here at issue. Where the ordinances have been construed like that in the present case as imposing strict or absolute liability upon registered owners, state courts have sharply differed as to their validity.[4]

It is our submission that the decision of the Illinois Supreme Court, as applied to factual situations represented by these dedefendants, violates the due process clause of the Constitution.[5] The decision is in conflict with principles declared by this Court in *United States* v. *Dotterweich, supra, Morissette* v. *United*

4. Cases holding such ordinances unconstitutional:

City of Seattle v. *Stone*, 67 Wash. 2d 886, 410 P. 2d 583 (1966); *People* v. *Forbath*, 5 Cal. App. 2d 767, 42 P. 2d 108 (1935); *People* v. *Hoogy*, 277 Mich. 578, 269 N. W. 605 (1936).

Cases holding such ordinances constitutional:

Kinney Car Corp. v. *City of New York*, 28 N. Y. 2d 741, 269 N. E. 2d 829 (N. Y. App. 1971), *appeal dismissed*, 404 U. S. 803 (1971); *Iowa City* v. *Nolan*, 239 N. W. 2d 102 (Iowa, 1976); *City of Kansas City* v. *Hertz Corporation*, 499 S. W. 2d 449 (Mo. 1973); *Commonwealth* v. *Ober*, 286 Mass. 25, 189 N. E. 601 (1934); *Commonwealth* v. *Minicost Car Rental, Inc.*, 354 Mass. 746, 242 N. E. 2d 411 (1968).

Cases construing such ordinances as not creating strict vicarious liability in order to save their constitutionality:

Red Top Driv-Ur-Self v. *Potts*, 227 Ark. 627, 300 S. W. 2d 261 (1957); *State* v. *Scoggin*, 236 N. C. 19, 72 S. E. 2d 54 (1952); *People* v. *Avis Rent-A-Car Division*, 24 Misc. 2d 1056, 206 N. Y. S. 2d 400 (1960); *Commonwealth* v. *Kroger*, 276 Ky. 20, 122 S. W. 2d 1006 (1938); *People* v. *Kayne*, 286 Mich. 571, 282 N. W. 248 (1938); *City of St. Louis* v. *Cook*, 359 Mo. 270, 221 S. W. 2d 468 (1949); *People* v. *Bigman*, 100 P. 2d 370 (Cal. App. 1940); *City of Columbus* v. *Webster*, 170 Ohio 327, 164 N. E. 2d 734 (1960).

5. We would not challenge the constitutionality of the ordinance if it had been construed as creating a rebuttable presumption that the registered owner is "responsible" for the unlawful parking, thus permitting registered owners, like petitioners, to establish facts showing that they cannot be punished for violations committed by others because of the absence of a "responsible relation" to the parking violation. *United States* v. *Dotterweich, supra* at 320 U. S. 284-285. That, however, is not permissible under the ruling of the Illinois Supreme Court.

States, supra, United States v. *Park, supra,* and *United States* v. *United States Gypsum Company, supra.*[6]

The practical importance of the issue is great to the petitioners and car rental companies throughout the United States because of the aggregate magnitude of the penalties, and to the law abiding renters of vehicles who will ultimately have to pay higher rentals. It is, in effect, a tax levied upon car rental companies for the privilege of doing business in the guise of fines for parking violations. It is impossible as a practical matter for car rental companies "to prevent or correct" parking violations by those who rent vehicles from them (*United States* v. *Park, supra* at 421 U. S. 673), or to obtain reimbursement of the penalties from the operators of the offending vehicles. The inevitable result is that the companies must increase their charges to *all* renters, thus requiring law abiding drivers to pay the fines incurred by the lawbreakers. If the City were candidly to require that innocent persons contribute to a fund for the payment of fines incurred by guilty persons, the violation of due process would be obvious. Yet this is exactly the result reached by indirection here.

The Facts.

In 1967 the City of Chicago filed complaints in the Circuit Court of Cook County, Illinois against Chrysler Leasing Corporation, Avis Rent A Car System, Inc. and Hertz Commercial Leasing Corporation as registered owners of motor vehicles that had been ticketed for alleged violations of City parking ordinances during 1966. Chrysler merely leases to Avis fleets of cars which are registered in Chrysler's name; it has no conceivable connection with the operation of the vehicles; it does not rent or lease cars to operators or users. Avis and Hertz lease or rent vehicles to operators thereof, usually to individual drivers for individual trips.

6. In *Kinney Car Corp.* v. *City of New York, supra,* a jurisdictional statement was filed with this Court prior to this Court's decision in *United States* v. *Park, supra,* and this Court dismissed the appeal for want of a substantial federal question (404 U. S. 803). The jurisdictional statement did not present the issues as they are tendered herein. Following this Court's dismissal of the appeal in *Kinney*, the New York legislature enacted a law requiring New York authorities to proceed to judgment against the operator as a prerequisite to proceeding against the rental company. *N. Y. Vehicle and Traffic Law,* § 239 (1972).

The Proceedings Below.

Count I of the Amended Complaint (App. D) charged the three companies, as registered owners of the vehicles involved, with 13,267 parking violations for the single year 1966. The aggregate penalty demanded, for that year alone, was $199,005, as follows:

For 1966: Chrysler—2,493 violations, $37,395
Avis —4,895 violations, $73,425
Hertz —5,879 violations, $88,185

The City sought to collect the fines solely on the grounds that the defendants were the registered owners of vehicles which had been tagged for alleged parking violations.

Count II of the Complaint sought a declaratory judgment construing the ordinance at issue in this case as imposing absolute or strict liability upon the registered owner of a vehicle parked overtime or otherwise in violation of the City's regulations. It asked that the court construe the ordinance as providing that it shall be no defense that the owner was not in possession of the vehicle—that "proof of lack of control of . . . a vehicle cannot be asserted and is not admissible as a defense". (App. D, p. D4.) This petition seeks review of the judgment of the Supreme Court of Illinois affirming the order of the Illinois Appellate Court granting a declaratory judgment as prayed in Count II.

The trial court had declined to grant the declaratory judgment as prayed for by the City in Count II.[7] Instead, it declared that the ordinance merely created a presumption that the registered

7. The trial court dismissed Count I for failure to set forth sufficient information to apprise defendants of the particular offenses charged. The Illinois Appellate Court reversed that ruling and remanded Count I for trial.

owner was in possession of the vehicle, and that this presumption might be rebutted. (App. C, p. C2).

The Illinois Appellate Court, in a split decision, reversed. It held that the ordinance was not merely evidentiary, but that it enacted a rule of "substantive law" which conclusively imposes "vicarious liability" for parking violations upon the registered owners of vehicles. (App. B, p. B11.)

The Supreme Court of Illinois affirmed the decision of the Appellate Court. It held that the only defenses available to the registered owner-defendant are to show that he is not the registered owner or that the violation did not occur. (App. A, p. A11.) (The latter defense is rarely—if ever—available to the car rental company, see *infra*, p. 9.) It ruled that other factors were "irrelevant" and inadmissible—that it was no defense to show that the defendant was not in possession or control of the vehicle at the time of the violation or that there was no relation between the registered owner-defendant and the operator of the vehicle other than as renter and rentee. Its ruling precluded the defendant from showing that it "was 'powerless' to prevent or correct the violation" (*United States* v. *Park, supra* at 421 U. S. 673 and other cases cited *infra*); or that it had no "authority and responsibility to deal with [the alleged violation]" (*Park, supra* at 421 U. S. 674); or that it had no means whatever, by collecting the fine from offending rentees, or otherwise, to facilitate the regulatory purpose of the City: that is, to prevent or discourage parking violations (see especially *Morissette, supra* at 342 U. S. 259-260).[8]

8. The Illinois Supreme Court, citing *Dotterweich, supra,* stated that the "responsible relation of an owner of a vehicle to its operation and use is a natural one," and that the public has a right to expect that a vehicle owner can deter the commission of parking violations. (App. A, p. A10.) This observation, without record support, may be applicable to an individual who lends his vehicle to a friend, neighbor or associate. It is totally inapplicable to car rental companies, as to which the court's ruling prohibited the introduction of evidence. The court obviously misconstrues the meaning of *Dotterweich's* requirement that the defendant must have a "responsible relation" to the offending act. In *Dotterweich* as in *Park, supra,* the defendant had the authority, duty and practical power "to prevent or control" the violation, and this Court relied upon that fact to sustain the conviction of the defendant.

The Context of the Problem.

The net effect of the decision is that registered owners like the petitioners herein have no possibility of defense whatsoever, even if, as frequently occurs (see *infra*, p. 10), the alleged parking violation did not occur and was improperly charged. Petitioner Chrysler has no relation, contractual or otherwise, with the operator of the vehicle since it merely leases fleets of cars to Avis. Neither Chrysler nor Avis nor Hertz, who are lessors or renters of vehicles, knows the person to whom the vehicle is rented. They do not learn of the alleged parking violation until long after the operator/rentee has turned in the rented vehicle, paid his rental fee and departed. After learning of the violation, with few exceptions, they have no access to the person who was in possession of the vehicle; they have no means of obtaining his statement as to whether the alleged offense did in fact occur; and the person who rented the car has no incentive to appear in the proceedings or to aid in contesting the charge. The alleged offender is immune; the guiltless owner is absolutely liable.

The facts are that the parking ticket is placed on the vehicle by a "meter maid" or policeman. With rare exceptions, the rentee-driver does not turn the ticket over to the car rental company. Under the practice in Chicago (which is similar to that elsewhere) the registered owner does not receive notice of the alleged offense until long after the ticket is written. The violation ticket uniformly fixes a trial date twenty-eight days from the date when the alleged violation occurs. It is not mailed to the person charged and no notice of any kind is given during the initial period. When no one appears at the trial date, a follow-up notice is issued, automatically increasing the penalty and setting a new trial date twenty-eight days after the initial date, or fifty-six days after the alleged violation. This notice is mailed to the registered owner. By that time, with rare exceptions, the person who rented the car has turned in the vehicle and paid the rental charge.

This imposition of liability upon defenseless persons is not only an injustice, but it is also an invitation to law violation and to careless and lawless law enforcement. No effort is made by law enforcement authorities to obtain the names of the operator-violators, although an Illinois statute requires car rental companies to furnish such names upon request.[9] In fact, under the decision below, the "substantive offense" is ownership of the car—the names of the actual violators are "irrelevant"; there is no need or incentive for the police to ascertain them; the money-fine is collected from the rental company defendants who had no connection with the offense.

Collection from the car rental companies is an easy and automatic way to "clear the books" and collect revenues. It has no regulatory purpose or effect. The possibility of showing that the parking charge is unjustified, or of demonstrating careless or inaccurate administration of the parking regulations, is eliminated, despite the fact that many charges of traffic offenses are unwarranted and unjustified. For example, according to data presented by briefing to the court below, a survey in Chicago showed that one out of every five meters tested was fast.[10] In one year, 17,000 Chicagoans complained to the Meter Complaint Unit that their tickets were issued unjustly and almost ninety percent of them had their tickets dismissed.[11] About 100,000 Chicagoans each year contest parking tickets and three-fourths of them are acquitted.[12]

9. *Ill. Rev. Stat.* 1977, ch. 95½, par. 11-1305(a).

10. Chicago Tribune, April 9, 1978, § 1, at 1, 12, reporting data provided by the Presiding Judge of the Chicago Traffic Court.

11. *Ibid.*

12. *Ibid.*

Nature of the Offense.

Illinois courts characterize violations of parking ordinances as "quasi-criminal."[13] The penalty prescribed by the parking ordinance of Chicago is a fine,[14] but arrest and imprisonment may be a consequence of parking violations.[15] For example, in *People* v. *Edge*, 406 Ill. 490, 94 N. E. 2d 359 (1950), it was held that "while an action for a violation of a municipal ordinance is both tried and reviewed as a civil proceeding [citations], this does not preclude a violation of a municipal ordinance, subjecting the offender to the penalty of a fine, from being a 'criminal offense', within the contemplation of the statute on arrest". (94 N. E. 2d at 363.) In *City of Chicago* v. *Crane*, 319 Ill. App. 623, 49 N. E. 2d 802 (1943), discussed on another point in the opinion below, the defendant failed to appear to answer to a charge of violating a "fine-only" parking ordinance and, according to the court, "a warrant issued and he was taken on the warrant". (49 N. E. 2d at 803.) The municipality may

13. *City of Chicago* v. *Lewis*, 28 Ill. App. 2d 189, 171 N. E. 2d 70, 71 (1960): "Our Courts have recognized the criminal aspect of proceedings for violations of city ordinances and have designated them as quasi-criminal." *See also United States* v. *Boyd*, 116 U. S. 616 (1886); *Flynn* v. *City of Springfield*, 120 Ill. App. 266, 267 (1905) (violation of parking ordinances "partakes largely of the criminal nature").

As commentators have noted, the precise meaning of this phrase, as reflected in applicable Illinois law and procedure, is not clear. Comment, *Traffic Violations: Vicarious Liability of Owners and Presumptive Owner-Operation*, 23 U. Chi. L. Rev. 532 (1956); Meade, *Defending an Illinois Proceeding for Violation of a Municipal Ordinance: The Worst of All Possible Worlds*, 1 Loyola L. J. 86 (1970).

14. In 1966, the year of the alleged violations in this case, the fines were fixed at $3 to $10. Circuit Court of Cook County, General Order No. 7, effective January 2, 1964. The prescribed fine is now $7 to $20. General Order No. 7, effective February 1, 1975.

15. See Comment, *The Quasi-Criminal Ordinance Prosecution in Illinois*, 68 Nw. U. L. Rev. 566 (1973).

detain the accused until trial if he is unable to post bond,[16] and defendants who fail to pay their fines may be jailed.[17]

Other jurisdictions, including some which have ordinances like that in the present case, expressly provide for imprisonment as well as fines.[18]

Accordingly, there would appear to be no room for dispute that the ordinance under which petitioners are being held to answer is criminal for purposes of basic due process requirements. The ordinance imposes penalties for violations of public laws which can have serious impact upon individuals, including subjecting them to arrest and restraint of liberty, and in this case to heavy aggregate financial penalties—in effect, a penalty for engaging in the car rental business.

The issue presented by ordinances of the type here involved is whether, in the circumstances, defendants may constitutionally be precluded from rebutting the criminal or quasi-criminal charges against them by showing that their only connection with the offense is ownership of the vehicle leased to another in an impersonal transaction, and that they have no possible means of

16. *Id.*

17. Chicago Tribune, Aug. 1, 1978, § 3, at 1, reporting that one Gerald Cooper was sentenced to four months in jail for contempt for not paying multiple parking fines, and that an assistant Chicago corporation counsel said that the City will seek jail sentences for other traffic scofflaws.

18. *E.g., People* v. *Avis Rent-A-Car Division,* 24 Misc. 2d 1056, 206 N. Y. S. 2d 400 (1960) (City of White Plains prescribed a fine of not more than $25 or imprisonment for not more than fifteen days for a second parking offense); *City of Portland* v. *Kirk,* 16 Ore. App. 329, 518 P. 2d 665 (1974) (ordinance provides for penalty for parking offenses of fines up to $500 or imprisonment not exceeding six months or both); see also, *City of Seattle* v. *Stone,* 67 Wash. 2d 886, 410 P. 2d 583 (1966) (appeal from judgment of fine for overtime parking violations providing that defendant "stand committed to the City Jail upon his failure fully to comply with this judgment"); *City of St. Louis* v. *Cook,* 359 Mo. 270, 221 S. W. 2d 468, 469 (1949) (ordinance provides that vehicle violating parking regulation is to be tagged with "arrest notice" to registered owner to appear and pay a small fine, otherwise arrest would be ordered or summons served).

preventing or correcting the alleged violation or of facilitating the regulatory purpose of the ordinance. We submit that this Court should grant this petition and rule that the imposition of liability on this basis is a violation of due process of law within the principles laid down by this Court in *United States* v. *Park, Morissette* v. *United States,* and *United States* v. *Dotterweich, supra,* and recently reiterated by this Court in *United States* v. *United States Gypsum Company, supra.*

The Opinion Below: The Due Process Issue.

The Illinois Supreme Court held that the Chicago ordinance imposes "vicarious criminal liability" upon registered owners and that it precludes any defense based upon lack of power to prevent or correct the offense or upon the total lack of regulatory purpose or effect of imposing the penalty upon owners like the defendant rental companies. It concluded that the imposition of this "absolute" or "strict" liability does not violate the due process clause of the Constitution. It relied upon three decisions of this Court, *Van Oster* v. *Kansas,* 272 U. S. 465 (1926); *Dotterweich* and *Park, supra.* In our submission, these cases do not support the court's conclusion, but require precisely the opposite result.

Van Oster involved the familiar case of forfeiture as a "common nuisance" of an automobile entrusted by its owner to another who used it for the illegal transportation of liquor. Whether *Van Oster* is regarded as analogous to a civil or a criminal case, it belongs to a restricted category of "limited circumstances[19] in which the imposition of vicarious liability has a direct and indispensable regulatory function. In most of the "restricted category cases" the imposition of vicarious absolute liability results in penalizing those who are really culpable; and in *all* such instances it induces a high degree of care which can reasonably be expected to reduce the frequency of law violation.

19. *United States* v. *United States Gypsum Company, supra* at 46 U. S. L. W. 4941, and cases cited therein which, as this Court stated, "attest to their generally disfavored status". *Ibid.*

For example, in the familiar "grog shop" cases, absolute liability unquestionably induces greater care on the part of the bartender to refrain from serving those who should be denied alcoholic beverages. In the forfeiture cases, even in the rare instance where the owner of the forfeited vehicle is not a deliberate participant, the value of the forfeited vehicle makes it practically feasible, as it is legally possible, for the penalty to be suffered by the guilty user of the vehicle as a result of the innocent owner's assertion of a claim against him.[20]

None of these applies in the present situation. There is no way in which car rental companies can increase the degree of "due care"; there is no way that they can distinguish between those who will and those who will not violate parking regulations. As a practical matter, it is impossible for the car rental companies to pursue private remedies against those who rent their vehicles for the purpose of obtaining reimbursement of the $3, $5, or $10 fines that the companies have paid.

The fact that distinguishes the above instances from the present case is the existence in those cases, but not here, of "a responsible relationship to the offense" on the part of the persons held vicariously liable. As stated in *Dotterweich, supra* at 320 U. S. 284, the persons held liable have "a responsible share in the furtherance of the transaction which the statute outlaws." In other words, they were in a practical position "to prevent or correct the violation"; they "had the power to prevent the act complained of"; there was "a sufficient causal link" between the

20. In its most recent discussion of forfeiture laws like that in *Van Oster,* this Court emphasized as a justification for applying forfeiture provisions to innocent lessors and bailors that confiscation "may have the desirable effect of inducing them to exercise greater care in transferring possession of their property," and acknowledged that it might be difficult to reject the constitutional claim of an owner "who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for, in that circumstance, it would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive." *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U. S. 663, 688, 689-90 (1974).

action or inaction of the defendant and the offense. *Park, supra* at 421 U. S. 672, 673, 674. Under such circumstances the imposition of penalties falls within "a now familiar type of legislation whereby penalties serve as effective means of regulation". *Dotterweich, supra* at 320 U. S. 280. The purpose of the statutes in this narrow category is "to require a degree of diligence for the protection of the public which shall render violation impossible". *Morissette, supra* at 342 U. S. 257.

The principle of strict, vicarious liability, and the authorities applying it, obviously do not encompass the present situation. Car rental companies cannot determine in advance whether a customer is the sort of person who will illegally park the rented vehicle; they cannot pick and choose customers on that basis; and they can do nothing to prevent the illegal parking or to visit its consequences upon the offender.

The case of Chrysler Leasing, one of the petitioners here, is a vivid illustration. Chrysler has no connection whatever with the operator of the vehicle or the parking violation, nor any power to prevent or correct the violation, nor any possible way to facilitate the regulatory purpose of the parking ordinance. Chrysler is merely the registered owner of the vehicles. It merely leases fleets of cars to Avis. Similarly, neither Avis nor Hertz can possibly, by contract or otherwise, influence the renter's behavior, make him pay the penalties or reimburse the lessor, or otherwise respond to the charges of violation. Nevertheless, the Chicago ordinance, as construed, imposes strict criminal liability upon all of them.

In fact, the only purpose served by the imposition of liability in the present case is to raise revenue for the City of Chicago. Obviously, this is not a permissible use of the criminal process.[21]

This Court has emphatically established that criminal respon-

21. The misuse of the criminal process for revenue purposes is even more egregious in light of the fact that the City of Chicago would be without power to impose a tax on a particular occupation, such as car rental companies. *Ill. Const.* art. VII, § 6(e). See *Paper Supply Co.* v. *City of Chicago,* 57 Ill. 2d 553, 317 N. E. 2d 3, 10 (1974).

sibility may not be imposed upon defendants in circumstances like the present. In June of this year, in an opinion by the Chief Justice, this Court reiterated the basic principle.[22] The leading cases are *Dotterweich* and *Park, supra,* in which the defendants were convicted of violations of the Federal Food and Drug Act. In both cases, the defendant had no personal participation in the shipment of adulterated food or misbranded drugs, or any intent to violate the statute. By virtue of his position as head of his company, however, he had the authority, responsibility and duty to supervise the company's operations and to make certain that misbranded drugs or adulterated foods were not shipped. In both of these decisions, this Court emphasized that the defendant could be convicted *only because* he had the power to prevent or correct the violation.

In *Park,* this Court, in an opinion by Chief Justice Burger, expressly based its ruling that the statute as applied to the defendant was valid on the fact that the statute *permits* "a claim that a defendant was 'powerless' to prevent or correct the violation to 'be raised defensively at a trial on the merits' ". *Park, supra* at 421 U. S. 673.[23]

This is precisely the defense that, according to the Illinois Supreme Court, may *not* be made under the Chicago ordinance.

In *Morissette* v. *United States, supra,* where this Court reversed the lower court's refusal to permit the defendant to show the absence of guilty intention, Justice Jackson, in a review of the doctrine of vicarious liability, emphasized that departures from the requirement of *mens rea* or personal guilt are permissible only in limited circumstances and only "whereby penalties serve as effective means of regulation." (342 U. S. at 259-260.)

22. "While strict liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements, . . . the limited circumstances in which Congress has created and this Court has recognized such offenses [citations omitted] attest to their generally disfavored status." *United States* v. *United States Gypsum Company, supra* at 46 U. S. L. W. 4941.

23. Cf. *United States* v. *Ayo-Gonzalez,* 536 F. 2d 652, 662 (5th Cir. 1976), noting that the foreclosure of such a defense "would indeed have grave due process implications."

He demonstrated that the exceptions to the requirement of personal guilt are based mostly on negligence, that is, the failure of the defendant to take preventive action which is within his practical power. (342 U. S. at 255.)

It is precisely these elements—the total lack of power to prevent or correct the violation and the total absence of any regulatory purpose to be served by the imposition of the penalty—that the Illinois Supreme Court has ruled to be "irrelevant" and not admissible as a defense in the present case.

We respectfully submit that this is impermissible doctrine. It is an impermissible expansion of the "strict liability offenses" which this Court has held to be "disfavored" (*Gypsum, supra*). It opens the door to a vast expansion of the use of criminal penalties for purposes that are foreign to our jurisprudence and offensive to our constitutional system. It converts the criminal process to a revenue-collection device; it amounts to a taking of property without fault or due process of law, in the form of the assessment of penalties which, as in the case of the present defendants, can be extremely large in aggregate amount; it relieves the violator of responsibility and the police of the necessity to pursue and punish the actual violators; and because it punishes persons with no possible means of challenging or evaluating the validity of the accused violation, it encourages careless and reckless administration of the law.[24]

24. The states are not without effective means of enforcing traffic laws against the actual violators, including out-of-state drivers. Illinois law requires renters of cars to provide the police with the names and addresses of renters of ticketed cars upon request, although the City of Chicago makes no effort to use this means of proceeding against the violators. See *supra,* pp. 4, 10. In contrast, the authorities in New York City are required to do so, and to proceed to judgment against the operator, as a prerequisite to seeking recovery against the rental company. See *supra,* p. 6, n. 6. Even more effectively, failure to pay parking fines may be made cause for suspension of a driver's license or of permission for an out-of-state driver to operate a vehicle within the state, as is done with respect to other driving-related offenses. *E.g., Ill. Rev. Stat.* 1977, ch. 95½, pars. 6-203, 6-206. Massachusetts has recently enacted such provisions for the enforcement of parking regulations against lessees of vehicles. Ch. 571, *1978 Mass. Acts,* approved July 22, 1978.

Reasons Why the Writ Should Be Granted.

The federal questions presented by this petition are substantial and have been decided by the Illinois Supreme Court in a manner contrary to the applicable decisions of this Court. The decision below squarely raises the issue of conflict of the Chicago ordinance with the due process clause of the Constitution. The jurisprudential importance of the issue is clear from the numerous decisions of this Court dealing with the principles here involved. Its significance to our constitutional system is fundamental; it deals with the imposition of criminal penalties upon defendants who, according to the holding below, are deprived of any opportunity to demonstrate that they should not be held accountable for the charged offense. If the principle of the decision below is allowed to stand, it is an invitation to states and municipalities, in a variety of situations, to impose liability upon the most easily available persons without fault or any rational connection to the prohibited act.[25]

The practical importance of the decision below is obvious. In effect, it encourages persons who rent vehicles from car rental companies to disregard parking regulations. Its only practical effect is to assess, in the aggregate, extremely large penalties, not only in Chicago, but throughout the nation, upon the business of renting vehicles to the public—penalties which serve no purpose

25. In *People* v. *Forbath*, 5 Cal. App. 2d 767, 42 P. 2d 108 (1935), Judge Schauer, for the court, stated:

> "If the registered owner of an automobile can be made guilty of a misdemeanor for the illegal parking thereof by the act of a person done outside his presence and without his knowledge or consent, then we see no logical reason why such registered owner should not progressively be made criminally liable for the more serious offenses of speeding, reckless driving . . . manslaughter and murder, all entirely independent of any knowledge, intent, or act of such owner and dependent exclusively upon the criminal whimsy of the itinerant driver.
>
> "We do not believe that the Constitution of our Nation has yet been swept away to the extent of permitting criminal guilt to be so speciously created. . . ." (42 P. 2d at 110.)

except as a source of revenue to the municipalities, but which, at the same time, amount to an extremely large tax or imposition upon the companies.

State decisions on identical or essentially similar ordinances are in conflict as to the impact upon such ordinances of the due process clause of the Federal Constitution. We submit that this Court should resolve the issue so as to eliminate this conflict as to a fundamental principle of federal constitutional law.

CONCLUSION.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

OPINION.

SUPREME COURT OF ILLINOIS.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS
SUPREME COURT } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and seventy-eight, within and for the State of Illinois.

PRESENT: DANIEL P. WARD, *Chief Justice*

JUSTICE ROBERT C. UNDERWOOD
JUSTICE HOWARD C. RYAN
JUSTICE THOMAS J. MORAN
JUSTICE JOSEPH H. GOLDENHERSH
JUSTICE WILLIAM G. CLARK

WILLIAM J. SCOTT, *Attorney General*

LOUIE F. DEAN, *Marshal*

ATTESTS CLELL L. WOODS, *Clerk*

Be it Remembered, that afterwards, to-wit, on the 3rd day of April, 1978 the opinion of the Court was filed in said cause and entered of record in the words and figures following, to wit:

CITY OF CHICAGO, a Municipal Corporation,
Appellee,
No. 48699 *vs.*
HERTZ COMMERCIAL LEASING Corporation, *et al.*
Appellants.
Appeal from Appellate Court First District.

Docket No. 48699—Agenda 7—January 1978.

THE CITY OF CHICAGO, *Appellee,* v. HERTZ COMMERCIAL LEASING CORP. *et al., Appellants.*

MR. JUSTICE MORAN delivered the opinion of the court:

This case involves the interpretation of a parking ordinance of the city of Chicago (City) with respect to an owner's responsibility for vehicles illegally parked by a person other than the owner. In August of 1967, the City brought three actions, consolidated in the trial court, against Hertz Commercial Leasing Corporation, Avis Rent-A-Car Systems, Inc., and Chrysler Leasing Corporation (defendants). In count I of its amended complaint, the City sought to recover payment of fines from the defendants as the registered owners of vehicles allegedly parked in violation of municipal ordinances during 1966. The City prayed for judgments of $88,185 against Hertz, charging 5,879 violations; $73,425 against Avis, charging 4,895 violations; and $37,395 against Chrysler, charging 2,493 violations. Count II requested a declaratory judgment, conceding that the violating vehicles were probably in the possession of lessees of the defendants at the time of the violations. The City, nevertheless, sought to have the applicable parking ordinance interpreted to preclude the defendants from raising the defense that the owner was not in possession of the vehicle at the time of the violation.

The trial court dismissed count I, finding that it did not sufficiently inform the defendants of the details of the alleged violations. The appellate court reversed and remanded count I for trial. (38 Ill. App. 3d 835.) This aspect of the decision is not before us.

On count II, the trial court entered a declaratory judgment finding that the applicable parking ordinance creates a presumption that the registered owner was in possession of the vehicle at the time of the parking violation, that the presumpion may be rebutted by a showing that the vehicle was not in fact in the possession of the registered owner, and, ultimately, that the defendants were not responsible for violations while the vehicles were in the possession of their lessees. A majority decision of the appellate court reversed, holding that the parking ordinance imposes vicarious liabiilty on the registered owner and that an owner is not absolved of responsibility if, at the time of the parking violation, he had "voluntarily transfer [red] possession [of the vehicle] for hire." (38 Ill App. 3d 835, 844.) We granted the defendants' petition for leave to appeal.

The adopted municipal ordinance in question provides:

> "Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be *prima facie responsible* for such violation and subject to the penalty therefor." (Emphasis added.) Chicago Municipal Code, ch. 27, sec. 364(a).

We emphasize at the outset that the ordinance cannot be read to treat owners who lease vehicles for hire any differently from owners who gratuitously lend their vehicles to friends or family members. The issue, though framed differently by the parties in response to the appellate court's opinion, is whether the ordinance purports to impose liability on the owner as the presumptive driver of the vehicle at the time of the parking violation, or whether it purports to impose vicarious liability on the owner, regardless of who actually parked the vehicle. If the former,

then an owner—any owner, not merely an owner who leases vehicles for hire—may absolve himself of liability by showing that he was not the person who parked the vehicle alleged to have been in violation of a parking ordinance.

Parking ordinances similar to, and almost identical to, the above cited ordinance have been examined by courts throughout the country over the past 50 years. The controversy almost invariably emerges as a concerted attempt by the courts to discern the intention of the local authority in regulating parking. Some local authorities seek to impose liability ultimately on the driver and do so by summoning the registered owner to court, at which time the owner is presumed to have parked the vehicle. The owner may successfully rebut this presumption, in which case the local authorities are thrust into the dilemma of either securing personal jurisdiction over the driver, or dismissing the case.[1] Other local authorities seek to impose liability directly on the registered owner, in which case the owner is held vicariously responsible for the violation. In either case, the person subject to the penalty is strictly liable, in the legal sense that the owner or driver need not have intended to commit the offense to be responsible for the violation.

The defendants vigorously argue that the plain meaning of the words "*prima facie* responsible" in the Chicago ordinance in-

1. In 1968, the city of New York passed an ordinance which provided that an owner who rents or leases vehicles shall be jointly and severally liable with the customer or lessee for parking violations. A report which accompanied the ordinance stated: "This proposed local law, as amended, would make auto lessors jointly and severally liable with the lessees of the vehicle for violation abuses whereby scofflaws may avoid the payment of traffic fines. At present, New York City is losing millions of dollars annually in unpaid parking tickets issued against rented vehicles. Invariably, auto lessors plead in Traffic Court that the customer and not the auto rental firm, is responsible for the traffic tickets. The court traditionally will either lay over such cases, adding to the ever-increasing backlog, or else drop the matter as a general practice due to the difficulties in securing personal jurisdiction over the actual violator." *Kinney Car Corp.* v. *City of New York* (1968), 58 Misc. 2d 365, 295 N. Y. S. 2d 288, 290, *aff'd* (1971), 28 N. Y. 2d 741, 321 N. Y. S. 2d 121, 269 N. E. 2d 829.

dicates that it was the municipality's clear intention to allow the registered owner to rebut the presumption that the vehicle was parked by the owner. The issue cannot be so facilely resolved. The words "*prima facie*" mean nothing more than "at first sight" or "so far as can be judged from the first disclosure" or "presumably" or "without more." (Black's Law Dictionary 1353 (4th ed. 1957); *Iowa City* v. *Nolan* (Iowa 1976), 239 N. W. 2d 102, 105.) In its statutory context, the words "*prima facie*" mean that the City has established its case against the registered owner by proving (1) the existence of an illegally parked vehicle, and (2) registration of that vehicle in the name of the defendant. Such proof constitutes a *prima facie* case against the defendant owner. There is no indication in the ordinance that the owner, to be presumed responsible for the violation, must be presumed to have been the person who parked the vehicle. In practice, the defendant, to absolve himself of responsibility, may show that the vehicle was not parked illegally or that he was not the registered owner of the vehicle at the time of the alleged violation. The defenses are limited, but the plain meaning of the ordinance admits of no more.

A predecessor of the ordinance in question provided:

> "Whenever any vehicle shall have been parked in violation of any of the provisions of this chapter prohibiting or restricting parking, the person in whose name such vehicle is registered shall be subject to the penalty for such violation." (Chicago Municipal Code, ch. 27, sec. 34.1.)

This unambiguous language imposes both strict and vicarious liability on the owner whenever his vehicle is illegally parked, irrespective of whether the owner was the person who parked the vehicle.

The defendants assert that, because the present ordinance added the words "*prima facie* responsible for such violation," the City deliberately chose to incorporate into the ordinance the presumption that proof of ownership is *prima facie* evidence that the vehicle was parked by the owner. We interpret the development of the ordinance differently.

In *City of Chicago* v. *Crane* (1943), 319 Ill. App. 623, the appellate court was called upon to construe the predecessor ordinance to determine whether an owner could be subject to the penalty for a parking violation which he did not commit or authorize. The trial court had found that an ordinance which "purports to make the owner of a car liable whenever the car is illegally parked * * * is completely without basis in law." (319 Ill. App. 623, 627.) The appellate court reversed, holding that the City established a *prima facie* case against the owner by proving that the defendant owned the car that was parked within 15 feet of a fire hydrant. The defendant had offered no evidence to rebut the *prima facie* case. In its opinion, the court cited cases from other jurisdictions which involved ordinances, all of which attached liability to the owner, but which differed in that they found the owner either liable as the owner or as the presumptive driver at the time of the violation. Because, in *Crane*, the owner did not introduce any evidence to rebut the *prima facie* case, the court was not called upon to determine if that Chicago ordinance imposed liability on the owner as owner or as the presumptive driver. It did, however, emphasize that the City had "made out a *prima facie* case." (*City of Chicago* v. *Crane* (1943), 319 Ill. App. 623, 631.) We can assume only that the City amended its ordinance to indicate, as intimated in the *Crane* decision, that proof of a violation and of registered ownership establishes the City's *prima facie* case against a defendant and that the defendant may rebut either element of the *prima facie* case. See K. Levin, *Ownership as Evidence of Responsibility for Parking Violation*, 41 J. Crim. L. & Criminology 61, 62 (1950).

Our own research reveals four cases from other jurisdictions which interpret the words "*prima facie* responsible" in precisely the context presented in this case. In *City of Columbus* v. *Webster* (1960), 170 Ohio St. 327, 328, 164 N. E. 2d 734, 735, the applicable ordinance read, in pertinent part:

> " 'If any vehicle is found * * * in violation of any * * * ordinance of this city, regulating the stopping or standing or parking of vehicles, and the identity of the driver cannot be determined, the owner, or person in whose name such vehicle is registered shall be held *prima facie responsible for such violation.*' " (Emphasis added.)

Ohio's supreme court, in holding the owner vicariously liable for the parking violation, expressly rejected the interpretation that the ordinance made "proof of illegal parking and registered ownership *prima facie* evidence that the vehicle was parked by the owner." It stated that the ordinance "merely places *prima facie* responsibility for the illegal parking of a motor vehicle on the public streets upon the owner of such vehicle. It thus places the responsibility upon the person who is in the best position to know the identity of the operator." *City of Columbus* v. *Webster* (1960), 170 Ohio St. 327, 331, 164 N. E. 2d 734, 737.

The Supreme Court of Missouri reached the same conclusion in interpreting a Kansas City ordinance which provided that "the owner or person in whose name such vehicle is registered in the records of any city, county or state shall be held *prima facie responsible for such violation*, if the driver thereof is not present." (Emphasis added.) (499 S. W. 2d 449, 451.) The court concluded that "[t]he words *'prima facie'*, as used in this ordinance, do not mean that the owner is presumed to be the driver," and held that the ordinance "places responsibility upon the *owner* without any requirement that he be found to have been the *driver*, whether that finding is premised on a presumption or direct evidence." (Emphasis in original.) (499 S. W. 2d 449, 452.) The court further noted that an ordinance "imposing liability for the parking violation fine on the owner as well as the driver may well result in fewer violations and thereby assist in the reduction of traffic problems." (*City of Kansas City* v. *Hertz Corp.* (Mo. 1973), 499 S. W. 2d 449, 452-53.) We note that the case provided an identical factual context to this case, in that a rental company had leased its car to a person whose identity was known by the court and who assumedly committed the violation.

In *Iowa City* v. *Nolan* (Iowa 1976), 239 N. W. 2d 102, 103, the applicable ordinance provided similarly:

> "If any vehicle is found stopped, standing or parking in any manner violative of the provisions of [applicable ordinances] and the identity of the operator cannot be determined, the owner or person or corporation in whose name said vehicle is registered shall be held *prima facie responsible for said violation.*" (Emphasis in original.)

Iowa's supreme court, citing the *Kansas City* case, held that, under the ordinance, a registered owner may be held vicariously liable for his illegally parked vehicle.

In a distinguishable case, an intermediate appellate court did reach a different conclusion. In *City of Portland* v. *Kirk* (1974), 16 Ore. App. 329, 331 n. 1, 518 P. 2d 665, 666 n. 1, the ordinance provided that "[t]he registered owner of the vehicle is *prima facie responsible for the violation* charged by the parking citation." (Emphasis added.) The court concluded that the ordinance established a permissive inference that the owner of the vehicle was the party who parked the vehicle. We note, however, that the Portland ordinance permitted imprisonment for up to six months for parking offenses. Although the court did not imply that it reached its conclusion in light of the possibility that an owner coud be subject not only to a fine but to imprisonment, it is recognized that vicarious liability should not be extended as readily to crimes which may subject a defendant to imprisonment. W. LaFave & A. Scott, Criminal Law sec. 32, at 223 (1972); F. Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689, 723 (1930).

We are in accord with the results reached by the supreme courts of Ohio, Missouri and Iowa. We believe that the City intended, under both the previous and the present ordinances, to subject the owner of an illegally parked vehicle to the penalty for such parking violation. The incorporation of the words "*prima facie* responsible" merely clarified that the defendant is not conclusively subject to penalty once the City establishes its

prima facie case of a violation and ownership, but that he can come forward with evidence contraverting either element of the case against him. Accordingly, we hold that the Chicago parking ordinance imposes vicarious liability on the registered owner and that proof that the vehicle was in the possession of another at the time of the violation is irrelevant to the substantive offense.

A question then arises as to whether the imposition of vicarious liability on an owner who rents a vehicle for hire, thereby voluntarily relinquishing the possession and control of the vehicle for the term of the lease agreement, is a constitutional denial of due process. The United States Supreme Court had occasion to consider the extent to which liability could be imposed on a vicarious party without depriving the party of its constitutional right to due process in *Van Oster* v. *Kansas* (1926), 272 U. S. 465, 71 L. Ed. 354, 47 S. Ct. 133. There a Kansas statute declared that a vehicle used in the illegal transportation of liquor was a common nuisance and subject to forfeiture. An owner voluntarily entrusted his vehicle to another who unlawfully used the vehicle without the owner's knowledge. In affirming the constitutionality of the statutory forfeiture procedure, the court stated:

> "It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it. * * * So here the legislature, to effect a purpose clearly within its power, has adopted a device consonant with recognized principles and therefore within the limits of due process." (*Van Oster* v. *Kansas* (1926), 272 U.S. 465, 467-68, 71 L. Ed. 354, 358, 47 S. Ct. 133, 134.)

Since that time, the United States Supreme Court has approved vicarious liability for violations which subject the vicarious party to criminal as well as civil liability. (*United States* v. *Dotterweich* (1943), 320 U. S. 277, 88 L. Ed. 48, 64 S. Ct. 134; *United States* v. *Park* (1975), 421 U. S. 658, 44 L. Ed. 2d 489, 95 S. Ct. 1903). Vicarious criminal liability has been

found within the limits of due process to the extent that the person who is unaware of the wrongdoing stands "in responsible relation to a public danger." (*United States* v. *Dotterweich* (1943), 320 U. S. 277, 281, 88 L. Ed. 48, 51, 64 S. Ct. 134, 136.) The responsible relation of an owner of a vehicle to its operation and use is a natural one. The public has a right to expect that a vehicle owner who voluntarily surrenders control of his vehicle to another is in the best position both to know the identity and competence of the person to whom he entrusts the vehicle and to deter the commission of parking violations. As one court has stated, "The knowledge of the ordinary user of another's car that the owner who permitted its use would have to respond to a summons and submit to a trial * * * would in all likelihood be a strong deterrent * * *." *Kinney Car Corp.* v. *City of New York* (1968), 58 Misc. 2d 365, 295 N. Y. S. 2d 288, 292, *aff'd* (1971), 28 N. Y. 2d 741, 269 N. E. 2d 829, 321 N. Y. S. 2d 121.

As to owners who rent vehicles for hire, contractual provisions —such as an express acknowledgment of personal liability to pay the lessor on demand for all parking fines and court costs or the requirement of security deposits—would also serve to deter the irresponsible commission of parking violations. Therefore, the imposition of vicarious liability on an owner who voluntarily relinquishes control of his vehicle to another is constitutionally permissible. Accord, *Commonwealth* v. *Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N. E. 2d 411.

We do not have occasion, under the facts of the instant case, to decide whether a vehicle owner can be held vicariously liable for a violation committed by a person, such as a thief, to whom the owner may have no "responsible relation" and no means of deterring such violation.

In an attempt to respond to the appellate court's opinion, the defendants rely on three distinct constitutional arguments based upon (1) the creation of an irrebuttable presumption, (2) the

denial of equal protection, and (3) the retroactive creation of a penal offense.

An irrebuttable presumption may be a constitutional denial of due process if it deprives a party of the opportunity to prove the nonexistence of an essential element of the substantive offense. The defendants' position assumes that an essential element of the ordinance is the presumption that the owner was the person who parked the vehicle. As we have previously stated, the ordinance does not purport to incorporate that presumption into the substantive offense. The two elements of the substantive offense are rebuttable by a showing that a violation was not committed or that the defendant was not the owner at the time of the violation. The constitutional requirement of procedural due process is satisfied because the defendant is not precluded from rebutting either element of the substantive offense.

The defendants' contention that the ordinance denies them equal protection under the law must also fall. As we emphasized at the outset, we do not interpret the ordinance to impose vicarious liability only upon owners who rent their vehicles for hire. Because the ordinance does not create a classification which distinguishes rental owners from ordinary vehicle owners, no equal protection issue is involved.

Similary, we find no merit to the defendants' argument that by construing the ordinance to impose vicarious liability on vehicle owners we have retroactively created an offense which could not have been reasonably ascertained from a reading of the ordinance. The fundamental principle is that a criminal law must not be given retroactive effect if judicial construction of the law is " 'unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.' " (*Bouie* v. *Columbia* (1964), 378 U. S. 347, 354, 12 L. Ed. 2d 894, 900, 84 S. Ct. 1697, 1703.) On its face, the ordinance imposes liability on an owner whenever his vehicle is illegally parked. Our construction of the ordinance is entirely consistent with the result reached in *City of Chicago* v. *Crane* (1943),

319 Ill. App. 623, as well as with recognized principles of vicarious liability for parking offenses in many other jurisdictions. Supreme courts in three neighboring jurisdictions have specifically interpreted the words "*prima facie* responsible" to have the meaning which we ascribe to them. Moreover, one of the defendants here was the party held vicariously liable in one case interpreting an ordinance which involved similar language. (*City of Kansas City* v. *Hertz Corp.* (Mo. 1973), 499 S. W. 2d 449.) We, therefore, conclude that the defendants could have reasonably anticipated a construction of the ordinance which imposes vicarious liability on the owner of an illegally parked vehicle irrespective of whether the owner actually parked the vehicle.

The defendants also contend that construing the ordinance to impose vicarious liability on the owner places it in direct conflict with sections 11-1305(a), 16-201, and 16-202 of the Illinois Vehicle Code (Ill. Rev. Stat. 1975, ch. 95½, pars. 11-1305(a), 16-201, 16-202), which, in 1966, were part of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1965, ch. 95½, pars. 188a, 236, 237). Section 11-1305(a) applies specifically to vehicle owners who lease their vehicles to others, and declares that such owners, "after receiving written notice of a violation of this Article or a parking regulation of a local authority involving such vehicle, shall upon request provide such police officers as have authority of the offense, and the court having jurisdiction thereof, with a written statement of the name and address of the lessee at the time of such offense and the identifying number upon the registration plates of such vehicle." (Ill. Rev. Stat. 1975, ch. 95½, par. 11-1305(a).) Sections 16-201 and 16-202 state, in essence, that a person who commits a violation of the Code or an owner or other person who directs or knowingly permits a vehicle to be operated on a highway in a manner contrary to law is guilty of an offense under the Code. (Ill. Rev. Stat. 1975, ch. 95½, pars. 16-201, 16-202.) The defendants argue that the ordinance is

inconsistent with section 11-1305(a) in that the statutory provision contemplates that lessor-owners be absolved of liability for parking violations by providing the names and addresses of the lessees who possessed the vehicles at the time of the offenses. They argue that the ordinance is also inconsistent with sections 16-201 and 16-202, in that those statutory provisions, by exclusion, contemplate that vehicle owners cannot be found guility of vehicle-related offenses merely because they own the vehicle at the time of an offense.

Section 11-1305(a) is wholly consistent with a municipal ordinance which imposes vicarious liability on any owner of a vehicle. The section is absolutely silent regarding allocation of liability. It dictates only that, *upon request*, a vehicle lessor shall provide the name and address of the lessee. We find no basis for defendants' assertion that the section contemplates that lessor-owners be absolved of liability for traffic violations by providing the name and address of the lessee who possessed the vehicle at the time of the offense. On the contrary, the section does not purport to limit liability to the lessee, but, rather, to facilitate the imposition of liability on either the lessor or the lessee. A municipality which permits liability to be imposed only upon the person who parked the vehicle might request the information in an effort to pursue the lessee. Another municipality, which provides for the imposition of liability directly on the owner as well as on the person who parked the vehicle, might invoke this section in an effort to attach liability on either the lessor or the lessee. The intention of section 11-1305(a) is to leave the decision of the allocation of liability to those law-enforcement officials who have authority over the prosecution of the specific offenses. The section is not in conflict with the ordinance in question and certainly does not repeal it by implication.

Sections 16-201 and 16-202 define those persons who might be criminally liable for offenses committed under the Illinois Vehicle Code. The sections do not expressly exclude vicarious

liability as a basis for holding a person responsible for vehicle-related offenses. The defendants contend, however, that the sections clearly evince a legislative policy which precludes the imposition of vicarious penal liability. Assuming *arguendo* that such a legislative policy exists, we must still confront the narrower question of whether the imposition of vicarious liability for municipal parking violations is inconsistent with a legislative policy which pertains to penal offenses. To answer that, we must examine the statutory scheme embraced by the Illinois Vehicle Code.

Section 11-207 of the Code (Ill. Rev. Stat. 1975, ch. 95½, par. 11-207), like its predecessor (Ill. Rev. Stat. 1965, ch. 95½, par. 122), provides for the uniform enforcement of traffic laws throughout the State and in all municipalities therein. It also provides that no local authority shall enact or enforce any ordinance in conflict with the provisions of the Code unless expressly authorized in the Code, but that local authorities may adopt additional traffic regulations which are not in conflict with the Code. (Ill. Rev. Stat. 1975, ch. 95½, par. 11-207.) Section 11-208 of the Code (formerly section 26 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1965, ch. 95½, par. 123)) authorizes local authorities to enact and enforce ordinances regulating, among other things, the parking of vehicles. It reads, in pertinent part:

> "(a) The provisions of this Chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:
>
> (1) Regulating the standing or parking of vehicles * * *." Ill. Rev. Stat. 1975, ch. 95½, par. 11-208(a).

Section 11-207 and its predecessor have been interpreted on numerous occasions by this court and by the appellate courts. The section has been consistently contrued to allow local authorities to adopt traffic ordinances to the extent that they are not inconsistent with State law. The section does not attempt

to preempt the field to the exclusion of local authorities. (*Ayres* v. *City of Chicago* (1909), 239 Ill. 237; *City of Rockford* v. *Floyd* (1968), 104 Ill. App. 2d 161, 169-70.) Section 11-208 underscores the State's policy of allowing local authorities to adopt traffic ordinances by specifying areas in which local autonomy will be preserved. It is no coincidence that the Illinois Vehicle Code does not purport to extensively regulate parking. The purpose of this statutory scheme is apparent. Although the Code expresses the general preference for uniform traffic regulations throughout the State, it also contemplates limited areas, such as the regulation of parking, for which statewide uniformity is wisely sacrificed in deference to the problems endemic to the individual municipalities.

This statutory scheme of separating municipal traffic violations from statutory traffic violations is reinforced by statutes indicating that the punishment of municipal traffic offenders is limited to fines (Ill. Rev. Stat. 1975, ch. 24, pars. 1-2-1, 1-2-1.1) and by regarding such violations as "quasi-criminal," endowed with many of the aspects of noncriminal cases, *e.g.*, proof by a preponderance of evidence rather than proof beyond a resonable doubt. (*City of Chicago* v. *Joyce* (1967), 38 Ill. 2d 368, 372-73; *Village of Maywood* v. *Houston* (1956), 10 Ill. 2d 117, 119.) In this regard, we have held that, in the absence of clear statutory language expressing an intention that State laws subsume those areas of local regulation, we will not construe local ordinances to be in conflict with State law. (*City of Chicago* v. *Joyce* (1967), 38 Ill. 2d 368, 373.) Moreover, recognized rules of statutory construction presume the harmonious operation and effect of two laws, so that specific ordinances are presumed to be consistent with and independent of general State laws. (1A Sutherland, Statutes and Statutory Construction secs. 23.10, 23.18, 30.05 (4th ed. 1972).) We do not read sections 16-201 and 16-202 to impliedly establish a policy that an owner cannot be vicariously liable for municipal parking violations. The sections apply only to criminal violations of the

Illinois Vehicle Code. As we noted earlier, it is understandable that a legislative policy would preclude the imposition of vicarious penal liability under the Vehicle Code because statutory traffic violations, unlike municipal traffic violations, are criminal in nature and may subject a defendant to severe punishment, including imprisonment. In light of this bifurcated statutory scheme, we feel that it would be improper to apply a legislative policy against vicarious penal liability to the municipal regulation of parking, a province for which the Vehicle Code contemplates local autonomy. Accord, *Kinney Car Corp.* v. *City of New York* (1968), 58 Misc. 2d 365, 295 N. Y. S. 2d 288, 292-93, *aff'd* (1971), 28 N. Y. 2d 741, 321 N. Y. 2d 121, 269 N. E. 2d 829.

We agree with the results reached by the appellate court, but do so for the reasons stated above. We, therefore, affirm the judgment of the appellate court and remand to the trial court for proceedings consistent with this opinion.

Affirmed and remanded.

ILLINOIS SUPREME COURT
Clell L. Woods, Clerk
Springfield, Ill. 62706
(217) 782-2035

May 26, 1978

Mr. Lawrence M. Templer
Attorney at Law
Friedman & Koven
208 S. LaSalle Street
Chicago, Ill. 60604

No. 46899—City of Chicago, a Municipal Corporation, appellee, vs. Hertz Commercial Leasing Corporation, et al., appellants. Appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for rehearing in the above entitled cause. Mr. Justice Kluczynski took no part.

Very truly yours

/s/ CLELL L. WOODS
Clerk of the Supreme Court

APPENDIX B

No. 57891

IN THE APPELLATE COURT OF ILLINOIS

First Judicial District

CITY OF CHICAGO,
a Municipal Corporation,
Plaintiff-Appellant,

vs.

HERTZ COMMERCIAL LEASING CORP., ET AL.,
Defendants-Appellees.

Appeal from the Circuit Court of Cook County, Municipal Department, First District.

Honorable
Nathan J. Kaplan,
Judge Presiding.

MR. PRESIDING JUSTICE GOLDBERG delivered the opinion of the court:

This appeal by the City of Chicago brings before us three suits, consolidated in the trial court, against Hertz Commercial Leasing Corporation, Avis Rent-A-Car Systems, Inc., and Chrysler Leasing Corporation (defendants). The City sought to recover payment of fines for alleged parking ordinance violations by cars owned by defendants. Defendants Hertz and Avis are in the business of renting motor vehicles to the general public. Defendant Chrysler owns vehicles which were leased to defendant Avis and used by Avis as part of its rental fleet. The order appealed from, entered without hearing evidence, dismissed Count I of the City's amended complaint and entered declaratory judgment on Count II that defendants were not responsible for parking violations by vehicles registered in their names but in possession of their lessees. A summary of the trial record is essential.

In August 1967, complaints were filed by the City of Chicago in the traffic division of the circuit court against all three defendants, alleging that cars registered in their names had been parked in violation of City ordinances during 1966. The City prayed judgment for fines of $88,185 against Hertz, alleging 5879 violations; $73,425 against Avis, alleging 4895 violations; and $37,395 against Chrysler, alleging 2493 violations.

In March of 1968, each defendant filed a demand for a bill of particulars, asking that it be provided with the exact time and location of each alleged parking violation. The demand also requested information regarding the date of follow-up notices allegedly sent by the clerk of the circuit court; the name and address of each person to whom the notices were sent; and also the court date, courtroom specified and the contents of each of said notices. Each defendant also filed a motion for a change of venue from the traffic division to the municipal division of the circuit court.

In March 1969, plaintiff filed a motion in response to defendants' demands for bills of particulars. This motion offered to provide defendants with the original hang-on tickets, so that they could ascertain when and where each violation occurred, but stated that plaintiff had no knowledge regarding the follow-up notices which were prepared and mailed by the clerk of the circuit court.

The motions for change of venue were granted and all three cases were transferred to the municipal division of the circuit court. The three actions were consolidated and an amended complaint was filed on November 15, 1971. The first count of the complaint contained the same allegations and prayer for relief as the original complaints. A computer print-out was attached to and incorporated into the amended complaint, listing the license number and City of Chicago sticker number of each car involved, the ordinance allegedly violated and the alleged date of each violation. The second count of the amended

complaint sought a declaratory judgment regarding interpretation of the City ordinance as did the original complaint.

Defendants moved to dismiss Count I of the amended complaint on the ground that it did not sufficiently inform them of the specific charges so that they could prepare a defense, since it failed to allege the time of each parking violation. Defendants alleged that no response or objection had been made to their demand for a bill of particulars. Rather, they alleged, the City took the position that there was no need to reply to the demand because the complaint had established defendants' absolute liability. Finally, defendants alleged that the delay by the City in providing them with the necessary information had so prejudiced them, that such information, if currently available, would no longer enable them to prepare their defense.

Defendants answered Count II of the amended complaint. As will hereinafter be completely stated, defendants urged that the court construe the pertinent ordinance in a manner different from that set forth by the City.

The City also filed an "opposition" to defendants' motion to dismiss. This pleading alleged that the computer print-out incorporated into Count I of the amended complaint sufficiently apprised defendants of the offenses charged so that they might prepare a defense; and also that no reply was required to the demand for a bill of particulars because the complaint adequately alleged a prima facie case against defendants, so defendants had the burden of going forward and showing why they should not be held liable. Finally, the motion alleged that the City's delay did not prejudice the defendants in any manner.

On April 4, 1972, the trial court entered a draft order striking Count I of the amended complaint because it failed to state the time and location of the offenses so as to enable defendants to prepare a defense. Because plaintiff adhered to the position that a prima facie case was established by the pleadings, Count I was dismissed.

The Court also entered a declaratory judgment on Count II construing the pertinent ordinance in accordance with the theory advanced by defendants. The issues raised by the two counts of the amended complaint will next be considered in order.

The plaintiff first contends that the trial court improperly dismissed Count I of the amended complaint for failure to provide defendants with a bill of particulars, because the information supplied to defendants was sufficient to enable them to prepare a defense. In response, defendants cite Section 37(2) of the Civil Practice Act which provides that a court has discretion to strike the pleading if a party "unreasonably neglects to furnish a bill of particulars, or if the bill of particulars delivered is insufficient, * * *." (Ill. Rev. Stat. 1975, ch. 110, par. 37(2).) The opposite party is entitled to a bill of particulars where allegations of a pleading are deficient in details. *Hemingway* v. *Skinner Engineering Co.* (1969), 117 Ill. App. 2d 452, 458, 254 N. E. 2d 133.

In March 1968, each defendant filed a demand for a bill of particulars, asking the time and location of each alleged violation, as well as information regarding follow-up notices allegedly sent by the clerk of the circuit court. Plaintiff responded to the demand, stating that it had knowledge regarding the follow-up notices. Plaintiff also offered to provide defendants with each of the original hang-on tickets so that defendants could determine exactly when and where each violation occurred. The record does not reveal any response to this offer by defendants.

On November 15, 1971, an amended complaint was filed for the three consolidated cases. Defendants did not renew their demand for a bill of particulars, but moved to dismiss Count I of the amended complaint because it failed to allege the time of each parking violation. The motion also alleged that plaintiff had never provided defendants with the requested bill of particulars. In dismissing Count I of the amended complaint, the trial court noted that defendants' requests for information

regarding the time and location of each violation were proper, but that the City maintained that the computer print-outs alone provide adequate information to establish a prima facie case.

The trial court neglected to note that the defendants failed to renew their demands for a bill of particulars in response to the amended complaint. It is established law that, "Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn." (*Bowman* v. *County of Lake* (1963), 29 Ill. 2d 268, 272, 193 N. E. 2d 833. See also *Yarc* v. *American Hospital Supply Corp.* (1974), 17 Ill. App. 3d 667, 670, 307 N. E. 2d 749 and cases cited therein.) A bill of particulars is deemed to be a part of the complaint which it particularizes. (*Marion* v. *In Re Estate of Wegrzyn* (1968), 93 Ill. App. 2d 205, 208, 236 N. E. 2d 328.) Therefore the responses to defendants' original demand for bills of particulars, whereby the City tendered all of the original tickets for inspection, would be deemed a part of plaintiff's original complaints. The filing of the amended complaint by the City necessitated a new demand for a bill of particulars. Failure of defendants so to do constituted a waiver of their previous demand for particulars.

The computer print-outs appended as exhibits to the amended complaint became an integral part thereof for all purposes. (*Sharkey* v. *Snow* (1973), 13 Ill. App. 3d 448, 451, 300 N. E. 2d 279.) As shown, these documents set out the Illinois license number and Chicago vehicle sticker number of each car involved as well as the ordinance allegedly violated and the date of each alleged violation. This should have been sufficient for defendants to present their defense concerning imposition of vicarious liability as their records would presumably indicate whether or not the particular automobile was in possession of a renter on the date in question. The only information lacking would be the place of each violation. If this additional information should become necessary, defendants could readily ob-

tain it by examination of the original hang-on tickets. The burden should not rest entirely upon the City of laboriously, and with great expense, supplying all of the information as to the place of each alleged violation when a large part of this material might well be unnecessary. As stated in defendants' brief, much of this information goes to the factual issue as to whether a violation actually occurred.

Thus, if defendants availed themselves of access to the original tickets as tendered by the City, they would have all of the essential information. In *Village of Oak Park* v. *Flanagan*, Appellate Court of Illinois, First District, Gen. Nos. 59721, 59720, filed December 10, 1975, ... Ill. App. 3d ....., ... N. E. 2d ....., this court held a complaint for 87 separate traffic violations with computer print-outs appended as exhibits which gave date of violation, city and state license numbers and location of violation was sufficient. In the case before us, an additional bill of particulars was not required to supplement the computer print-outs and the right to production and inspection of all the original tickets. The City was, in our opinion, not required to furnish defendants with copies of the notices of violation sent to defendants. These notices could at best have been only a duplication of the information contained upon the tickets themselves. These notices were sent out by the clerk of the circuit court. There is no showing that the City had possession of copies of this information, which, if essential, should be produced by the usual legal process.

The order dismissing Count I of the amended complaint is therefore reversed and Count I remanded for additional proceedings not inconsistent with this opinion.

It remains to consider the contentions of the parties arising from the second count of the amended complaint which prayed a declaratory judgment. This count alleged that defendants were all licensed corporations in Illinois doing business in the City. The complaint then set forth ch. 27, sec. 364 of the Municipal Code of Chicago:

> "Presumptions: Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation."

The City alleged that there were approximately 11,000 parking tickets outstanding concerning automobiles owned by defendants and that it was probable that many, if not all, of these automobiles were in the possession of lessees of the defendants when the various violations occurred. The City alleged that the above portion of the Municipal Code imposed liability for parking violations on the registered owners and that proof or lack of control of the automobiles by defendants by virtue of leasing agreements could not be asserted and was not competent evidence as a defense. This second count of the amended complaint prayed declaratory relief (Ill. Rev. Stat. 1969, ch. 110, par. 57.1) establishing that under the Municipal Code of the City, the registered owner of a vehicle parked in violation of the ordinance was responsible for such violation and that under this ordinance it would not be a defense that said owner was not in possession of the vehicle at the time of violation.

Defendants filed a joint answer to the second count of the amended complaint. They admitted that they were the registered owners of all of the vehicles involved but averred that they were engaged in the business of renting and leasing automobiles to various customers pursuant to bailment contracts and that during the term of these agreements each motor vehicle was in exclusive possession and control of their customer-lessee. Defendants further averred that the ordinance quoted by the City creates a presumption of liability upon registered owners of vehicles for violation of parking ordinances which may be rebutted by proof that on the date and at the time of violation the vehicle was not in the control of defendants but was in the exclusive possession and control of their customer-lessee or bailee. The answer alleged that proof that a vehicle was thus under lease at the time of the alleged violation was a complete

defense on behalf of the registered owner. Defendants prayed that the court deny the City's interpretation of the ordinance and that the court declare that the presumption thereby created could be rebutted by a proper showing that, at the pertinent time, the vehicle was not in possession of the registered owner.

The trial court was provided with memoranda of law by both sides and heard argument of counsel. The court found that the second count of the amended complaint was properly brought for declaratory judgment. The court decided, as requested by defendants, that the quoted sec. 364 of the Municipal Code creates a presumption that the registered owner was in possession of the vehicle on the date and at the time of the violation; this presumption may be rebutted by a showing that at the time and date of the violation the vehicle was not in possession or under control of the owner; and that defendants are not responsible for parking violations involving vehicles registered in their names while such vehicles were in the possession of their customers-lessees.

We are in accord with the decision of the learned trial judge concerning his conclusion that the action for declaratory judgment was properly brought. Although the details and provisions of rental agreements or leases are not before us, the admissions in the pleadings provide sufficient basis for a declaration of the rights of the parties under the pertinent ordinance. In this opinion we assume that defendants were the registered owners of all of the vehicles involved in all of the alleged violations and, as averred in the answer of defendants, we assume that certain of these vehicles were, at the time of the alleged violation, in the possession and under the control of rental customers. The issue here is liability of the registered owner of a motor vehicle for a parking violation of a City ordinance when possession and control of the automobile has been surrendered by the owner to a third party under a mutually permissive arrangement such as the type of bailment generally referred to as a rental or lease agreement.

This court has previously held that proof of ownership or control by the defendants is essential to the imposition of a fine for a parking violation. (*City of Chicago* v. *Myers* (1968), 95 Ill. App. 2d 443, 237 N. E. 2d 866.) In the case before us, in view of the admission by defendants' motion to dismiss the first count of the amended complaint, we will proceed on the assumption that the violations all existed as set forth in the computer print-outs appended to the amended complaint and also that defendants were the registered owners of the vehicles with license numbers as set forth in these print-outs. This assumption will not preclude full opportunity to defendants, if they so desire, after they have answered the first count, to raise pertinent factual issues regarding the existence of an ordinance violation in each instance.

The ordinance provides that the registered owner "shall be prima facie responsible for such violation." The meaning of the phrase "prima facie" and its application in the law of motor vehicles is well illustrated by the Supreme Court of Illinois in *McElroy* v. *Forcé* (1967), 38 Ill. 2d 528, 232 N. E. 2d 708. The Court there discussed an instruction which told the jury that if they found that a certain person was the owner of one of the automobiles, it was to be presumed that he was operating the same at the time of the collision. The Court pointed out that a presumption may be defined as an inference to be drawn by common sense from a known course of events which usually leads to the existence of a related fact. (38 Ill. 2d 528, 531.) The Court also pointed out that a presumption does not operate to shift the burden of proof but only to shift to the party against whom it operates the burden of going forward and introducing evidence with which to overcome the presumption. In the absence of such countervailing evidence, the presumption is sufficient to support a finding. 38 Ill. 2d 528, 532, 533.

Application of the principles thus expounded in *McElroy* lead to the conclusion that this ordinance is intended to have a presumptive effect. This conclusion is supported by a number

of cases. In *City of Chicago* v. *Crane* (1943), 319 Ill. App. 623, 49 N. E. 2d 802, the parties stipulated that defendant was the registered owner of a vehicle which had been unlawfully parked. Defendant put in no evidence and the court held that the presumption of liability should be applied. The court expressly pointed out (319 Ill. App. 623, 631):

> "It is common knowledge that many thousands of automobiles are parked in the streets at all times and it would be inconvenient and impossible for a municipality such as Chicago to keep watch over parked vehicles to ascertain who in fact operated or parked them."

The presumptive ordinance is thus a necessary aid to municipalities in enforcement of parking restrictions. In addition to *Crane*, the following authorities arrive at the same result regarding presumptive operation of this type of traffic ordinance: *Commonwealth* v. *Ober* (1934), 268 Mass. 25, 189 N. E. 601; *People* v. *Kayne* (1938), 286 Mich. 571, 282 N. W. 248 and *People* v. *Bigman* (1940), 38 Cal. App. 2d (Supp.) 773, 100 P. 2d 370.

The conclusion reached in all of these cases and supported by the language of the ordinance before us does not necessarily solve the problem presented by this record. The nub of the issue before us is whether the existence of a bailment or rental agreement is sufficient to permit the imposition of a vicarious liability upon the leasing company or whether the City should be required to attempt enforcement of its ordinance against the lessee-bailee who was in possession and operation of one of defendants' automobiles at the time of the violation.

The ordinance above quoted is sec. 364 of ch. 27 of the Chicago Muncipal Code. Chapter 27 contains general regulations pertaining to traffic. The problem of parking is considered in secs. 27-305 to secs. 27-332 inclusive. These sections contain numerous regulations regarding parking. Section 364 of ch. 27 as above quoted is a general section which applies to all of the remaining provisions pertaining to parking. The

major problem here is not precisely a construction of sec. 364. As above shown, the words "prima facie" have a definite and well-recognized legal meaning. It is apparent that the ordinance definition in this regard is not intended to operate in a conclusive manner or to foreclose any and all defenses by the owner of a vehicle. Within the recognized definition of "prima facie" the ordinance operates only to shift the burden of producing evidence from the City to the defendant. The real problem before us then is best described as a matter of substantive law in determining whether the fact that the owner of an illegally parked vehicle has rented it to a third person for hire is competent evidence as a defense against the imposition of vicarious liability upon the owner. Stated otherwise, the issue here is whether proof of a permissive bailment or rental agreement is legally sufficient to overcome the presumptive liability imposed upon the vehicle owner by the ordinance.

We find a division of authority in answering this question. In *Red Top Driv-Ur-Self* v. *Potts* (1957), 227 Ark. 627, 300 S. W. 2d 261, the municipality took the position that the lessor of the automobile was conclusively liable for payment of the fine. The Supreme Court of Arkansas held that such an interpretation of the ordinance would make it unconstitutional and that the offer by the rental company to furnish the municipality with the name and address of all persons who had rented their automobiles at the time of each violation was sufficient to absolve the owner-lessor of the vehicle from liability for the traffic violation. The Court listed a number of pertinent authorities bearing upon this issue. (See 227 Ark. 627, 628, 629.) We find the Arkansas case cited and followed in *People* v. *Avis Rent-A-Car Division* (1960), 206 N. Y. S. 2d 400, 24 Misc. 2d 1056, decided by the County Court of Westchester County. The court there held that a conclusive presumption would infringe upon constitutional rights and the ordinance should be construed in a constitutional manner by relieving the owner of responsibility when he has produced evidence to show that since he was bailor he had no control over commission of the traffic violation by the bailee.

In *Commonwealth* v. *Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N. E. 2d 411, an automobile was given a parking ticket. It had been rented out for hire by the defendant. The parties agreed that there had been a violation of the ordinance which provided that the registered owner shall not, "allow, permit or suffer * * *" the vehicle to violate parking regulations. The Supreme Court of Massachusetts held that it is permissible for a legislative body to impose vicarious liability for an act where the penalty is "relatively small, and conviction does no grave damage to an offender's reputation." (354 Mass. 746, 749 citing from *Morissette* v. *United States* (1952), 342 U. S. 246, 96 L. Ed. 2d 288, 72 S. Ct. 240.) The Massachusetts Supreme Court also pointed out that this decision would not amount to a deprivation of property without due process of law and also, "Far from being a denial of the equal protection of the laws, a decision for the defendant would more likely create one." 354 Mass. 746, 749.

We are in accord with the result reached and with the reasons expounded by the Supreme Court of Massachusetts. We would not characterize this result as based upon a so-called conclusive presumption in interpretation of the ordinance before us. In this regard we need not consider the result reached by the Arkansas and New York cases above cited which deal with the legal results of conclusive presumption. It would not seem proper or fair to impose vicarious liability upon an owner where possession of the vehicle had been taken from him without his knowledge and against his will, as the case of theft. However, where the registered owner of a motor vehicle voluntarily transfers possession thereof for hire, we have no hesitation in imposing a vicarious liability for traffic violations by the actual driver. It is far easier for the rental company to protect itself against the driver of the car who actually violated the ordinance that it would be for the City to try to pursue such violators. See 354 Mass. 746, 749, where the Court noted the existence of such a protective provision in the rental agreement.

Also, it is common knowledge that the renting of automobiles is a lucrative business which should not be permitted to use its own operation as a shelter for those who violate legitimate and salutary City ordinances. It is grossly unfair that residents of a large metropolitan area who are responsible and amenable to the City for parking violations should be required to obey these ordinances, which are of crucial importance for reasons of safety and for expediting the flow of traffic, while rental companies can obtain full benefit of the City's traffic facilities for their own profit and at the same time use their business effectively to prevent uniform and fair enforcement of traffic regulations.

The result reached by the trial court as regards the second count of the amended complaint is reversed and the cause remanded for further proceedings predicated upon the legal theory that the ordinance here in question is presumptive in its operation but that rental agreements or bailments to third parties entered into by defendants in the usual course of their business do not constitute a defense to the claim of the City against the defendants themselves as registered owners for traffic violations committed by operators of the rented vehicles.

Accordingly the order appealed from is reversed and the cause remanded with directions regarding trial of Count I and disposition of Count II as above set forth.

REVERSED AND REMANDED WITH DIRECTIONS.

BURKE J., concurs.

SIMON, J., specially concurs in part and dissents in part.

MR. JUSTICE SIMON specially concurring in part and dissenting in part:

I disagree with the conclusion that the defendants waived their demand for a bill of particulars by failing to renew it after the amended complaint was filed. Since Count I of the amended complaint was identical with the original complaint, filing a new demand for a bill of particulars would have been only a needless duplication. In *Marion* v. *In re Estate of Wegrzyn* (1968), 93 Ill. App. 2d 205, 236 N. E. 2d 328, the only case cited by the majority which deals with a bill of particulars in instances where an amended complaint had been filed, the amendment differed substantially from the original complaint. In the interest of simplifying litigation and reducing the volume of court records and paper work the judicial process requires, the demand for a bill of particulars directed to the original complaint should in this case be applicable to the amended complaint even though the demand was not formally repeated by an additional document.

I concur with the majority that the city responded sufficiently to the demand for the bill of particulars by advising the defendants that the original hang-on tickets would be made available for their inspection. This procedure, similar to the one provided for producing documents containing information sought by interrogatories (Supreme Court Rule 213(d)), is more expedient than burdening the court records with written responses setting forth the particulars of the time and location of each of more than 11,000 parking violations. Based on the assumption that the city will make the hang-on tickets available for inspection in a form legible enough so that the defendants can compile from them the information with respect to each violation sought by the request for the bill of particulars, I agree that reversal of the dismissal order as to Count I is appropriate.

So far as Count II of the complaint is concerned, I would affirm the circuit court. I see no constitutional defects in the

ordinance as interpreted by the city. I simply do not agree that Section 364 of the Chicago Traffic Regulations or the numerous ordinances regarding parking found in Chapter 27 of the Chicago Municipal Code are fairly susceptible to the interpretation given it by the city and ratified by the majority opinion.

As the majority points out, section 364 applies to other sections of the Chicago Municipal Code which relate to parking. Section 364 makes the owner presumptively liable for a parking violation in some instances even where the other sections as worded do not. Three examples taken from Chapter 27 illustrate this point. Section 308(a) provides:

> "When signs have been erected upon any street indicating that * * * parking is prohibited during designated hours * * * no person shall park any vehicle on said street in violation of any such signs."

That ordinance applies to a person who parks a vehicle, not to the owner unless the owner is such a person. Section 311(a)(13) provides:

> "It shall be unlawful for the operator of any vehicle to * * * park such vehicle in * * * the following places * * *: At any place where official traffic signs have been erected prohibiting * * * parking."

This ordinance on its face is a prohibition directed to the operator rather than the owner unless the owner is also operating the vehicle. Similarly, section 329 applies to the owner only if he is the operator. It provides:

> "It shall be unlawful for the operator of any motor vehicle * * * to park such vehicle in such parking meter zone for a period of time longer than is designated on the meter for the value of the coin * * * deposited in such meter."

For a person who may not fit the description of the offender as set forth in these three ordinances to be made presumptively liable by Section 364, and then precluded from rebutting the presumption because the person who actually parked or operated

the vehicle was his lessee or bailee is neither logical nor reasonable. This is particularly true where the only basis for reaching this result is a rule labeled by the majority as one of substantive law, but gleaned by the majority from the application of traffic regulations of the city of Boston which contained no provision making the owner only "prima facie responsible" and in many respects differed from the Chicago ordinances.[1] A rule of substantive law is suspect if its effect is to transform a presumption which the ordinance in question clearly provides is rebuttable into an irrebuttable one in situations where the owner's bailee or lessee rather than the owner was the offender, not the owner. If the City of Chicago intends to preclude the owner from rebutting the presumption raised by its ordinance by showing the owner's lessee or bailee was responsible for the illegal parking, the ordinance should be amended to state that. Instead, the majority has masked its distortion of the ordinance by using the label of "a matter of substantive law" to rewrite the traffic ordinances set forth above, and others as well, by concluding that the owner has no defense and is guilty where his lessee or bailee is the person who operates the vehicle or parks it.

I agree that (i) illegal parking of cars on city streets is a public mischief; (ii) as a matter of public policy and traffic administration the city authorities should not be required to keep watch over parked vehicles to find out who parked them; (iii) the car rental companies can protect themselves against illegal parking of their cars by their customers, and they should not be permitted to escape responsibility for their cars illegally parked on city streets and at the city airport. I applaud the result the majority strives to reach, but it should be accomplished by an amendment of the ordinance instead of by an interpretation carving an irrebuttable presumption under some circumstances out of an ordinance which on its face provides only for "prima facie

1. *Commonwealth* v. *Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N. E. 2d 411 and *Commonwealth* v. *Ober* (1934), 286 Mass. 25, 189 N. E. 601, on which the majority relies, dealt with rules and regulations of the Boston Traffic Commission.

responsibility" in all circumstances. I would, therefore, affirm the circuit court's construction of the ordinance in response to Count II of the complaint. In the interest of freeing the streets of illegally-parked cars owned by the defendants, I would urge the City Council of Chicago to amend the city traffic regulations so that they provide the owner is responsible for illegal parking of a vehicle which is in the possession of his bailees, lessees or customers.

APPENDIX C

STATE OF ILLINOIS
COUNTY OF COOK } ss.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
Municipal Department, First District

No. 67 MC 102415
CITY OF CHICAGO,
a Municipal Corporation,
Plaintiff,
vs.
HERTZ COMMERCIAL LEASING CORP.,
Defendant.

No. 67 MC 102416
CITY OF CHICAGO,
Plaintiff,
vs.
AVIS RENT-A-CAR SYSTEMS, INC.,
Defendant.

No. 67 MC 102417
CITY OF CHICAGO,
Plaintiff,
vs.
CHRYSLER LEASING CORPORATION,
Defendant.

Consolidated
No. 68 MC 50305

ORDER

This cause coming on the pleadings in Count II of this cause, all parties having been represented by counsel and the Court having examined the pleadings herein and having heard argu-

ments of counsel and being fully advised in the premises, the Court hereby finds that:

1. Count II is a complaint for a declaratory judgment praying for an interpretation of Chapter 27 § 364 of the Municipal Code of the City of Chicago.

2. The Court finds that Count II is a case of actual controversy and is properly brought under Section 57.1 of the Civil Practice Act (Ill. Rev. Stat. 1971, ch. 110, par. 57.1).

3. That judgment be and the same is hereby entered pursuant to Section 57.1 of the Civil Practice Act of the State of Illinois construing Chapter 27, Section 364 of the Municipal Code of the City of Chicago and making binding declarations of rights of the parties hereto as follows:

(a) Chapter 27, Section 364 of the Municipal Code of the City of Chicago creates the presumption that the registered owner of a vehicle parked in violation of a traffic ordinance of the City of Chicago was in possession of the said vehicle on the date and at the time of such violation.

(b) The presumption created by said Section 364 is rebuttable and may be rebutted by a showing by the registered owner that at the time and date of the violation, the vehicle was in fact not in the possession or within the control of the registered owner.

(c) Pursuant to Chapter 27, Section 364 of the Municipal Code of the City of Chicago, the defendants are not responsible for parking ordinance violations involving vehicles registered in their name, while such vehicles were in the possession of customers-lessees of the defendants.

ENTER:

/s/ NATHAN J. KAPLAN
Judge

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY
Municipal Department–First District

CITY OF CHICAGO,
a Municipal Corpoation,
Plaintiff,
67 MC 102415 vs.
HERTZ COMMERCIAL LEASING CORP.,
Defendant.

CITY OF CHICAGO,
Plaintiff,
67 MC 102416 vs.
AVIS RENT-A-CAR SYSTEMS, INC.,
Defendant.

CITY OF CHICAGO,
Plaintiff,
67 MC 102417 vs.
CHRYSLER LEASING CORPORATION,

Defendant.

Consolidated
No. 68MC 50305

OPINION

This matter comes before the Court on complaints filed by the City of Chicago in cause No. 67 MC 102415, City of Chicago v. Hertz Commercial Leasing Corp., 67 MC 102416, City of Chicago v. Avis Rent-a-Car Systems, Inc., and 67 MC 102417, City of Chicago v. Chrysler Leasing Corporation and 68 MC 50305, City of Chicago v. Hertz Commercial Leasing Corp., all three complaints having been consolidated into Cause 68 MC

50305 since the matters in issue arise out of the same ordinances and the decision of the Court will be applicable to all of the complaints filed under the above enumerated cause. Since the filing of the original complaints, numerous meetings have been held between the counsel for the defendants, the Corporation Counsel and the Court, all designed to attempt to expedite the facts and issues so that they can be presented to the Appellate Court for review.

On November 15, 1971, the City filed amended complaints in each of the three cases which have been consolidated into 68 MC 50305.

This Amended Complaint consisted of two counts. In Count I the City, complaining of the defendants set forth that each of the defendants was in the business of leasing automobiles and were duly licensed corporations operating in the State of Illinois. That in the original complaint there had been filed Exhibit A, a computer punch out form, which by virtue of the information contained in the original and amended complaints apprised the defendants of the license plate and City of Chicago license emblem numbers of the vehicles which were parked illegally, the date upon which the alleged violations took place and the section of the Municipal Code under which these violations presumably fell.

For the sake of the record, it is sufficient simply to state that various pleadings were filed by the defendants relating to the issue of discovery, in which defendants set forth that they would be unable to answer to the allegations in Count I without knowing where and at what time the alleged violations took place. From time to time the Court indicated to the plaintiff that it would grant the request of the defendants for this information and indicated to the plaintiff that whatever time would be necessary for the plaintiff to furnish this information would be allowed.

In the interim and throughout the various conferences which were held, the plaintiff has maintained its position that the information already furnished by plaintiff in its Exhibit A is sufficient to establish a prima facie case under the ordinance

which is currently in effect in the City of Chicago, Chapter 27, Section 364 of the Municipal Code which states as follows:

> "Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor."

On March 11th, at a hearing held before this Court on the defendant's motion to dismiss the amended complaint and upon defendant's answer to Count II of plaintiff's complaint, the City, by its counsel indicated that they would stand upon their amended complaint and proceed without furnishing the information requested by defendants, which the Court had indicated to the plaintiff would be a requirement before proceeding with the trial of the issue.

The Court is of the opinion that the City Ordinance upon which the City has proceeded is a presumptive ordinance, that in order for the City to make out a prima facie case, it is necessary for the City to furnish the information requested so that defendants are able to defend themselves in this type of proceeding.

The City in reply has cited several cases under which it seeks to establish its position that it does not require any further information than that which has been already furnished for a finding against the defendant and in line with that they quote *City of Chicago* v. *Crane*, 319 Ill. App. 623 and *Commonwealth* v. *Ober*, 286 Mass. 25 and also the ordinance of the City of Chicago before and after these decisions. In *City of Chicago* v. *Crane* it was stipulated that the defendant was a registered owner of a certain automobile which had been parked five feet away from a fire hydrant, in violation of a City Ordinance prohibiting parking within fifteen feet of a fire hydrant. The defendant elected not to put in any evidence. In reversing the trial court, the Court stated:

> "(2) Section 27-19 makes it unlawful for the operator of a vehicle to park it at any curb within 15 feet of a fire hydrant," while Sec. 27-34.1 provides that when any vehicle

shall have been parked in violation of 27-19 (7) 'the person in whose name such vehicle is registered shall be subject to the penalty for such violation.' *We are of the opinion* that under the stipulated facts, defendant violated the ordinance and was liable, and the court erred in discharging him."

"In *Commonwealth* v. *Ober*, 286 Mass. 25, 189 N. E. 601, defendant was charged with parking or allowing to be parked, an automobile registered in her name, contrary to the regulation adopted by the Boston Traffic Commission. She was found guilty on each of the two counts and sentenced to pay a fine of $5 on each count. The police officer who saw the parked car, attached a tag to it on which appeared the registration number of the automobile, the day, time and place when and where the car was parked and tagged and also a printed statement that the automobile had been tagged for a violation of traffic regulations, that is, parking in a restricted space, and requested her to bring the tag to the police station within 48 hours. Notice of the tagging was sent by the traffic bureau of police to defendant at her address. The tags were never returned, and nothing was heard from defendant. The Court said: "There was no evidence as to who left or parked the defendant's automobile at the times and places set forth in the complaints or who took it away. At the close of the evidence defendant requested the court 'to instruct himself' that (3) The burden is upon the Commonwealth to prove that the defendant parked her car in the premises alleged in the complaint; * * * (7) The court should rule as a matter of law that ownership of a motor vehicle is no evidence that the said motor vehicle was parked illegally by the defendant. The court refused these and other requests. The court in refusing request numbered 7, in its opinion said: 'he (the trial judge) had in mind that the rules alleged to have been violated do not in terms require that the parking shall be done by the defendant."

"And continuing: There are many modern instances of acts which are made criminal by legislation where there is no intent or criminal knowledge by the offender. These offenses are commonly described as mala prohibita as distinguished from offenses which are mala in se. * * *

"The legislation here under consideration belongs to the class of statutes where the General Court, legislating for the common welfare, has put the burden upon the individual of ascertaining at his peril whether his conduct is within the scope of the criminal prohibition. The moral turpitude, the motive which prompts the illegal act, and the knowledge or ignorance of its criminal character are immaterial on the question of guilt. And the court there further said:

" In the instant cases the public mischief to be averted is obvious. The inconvenience of keeping watch over parked vehicles to ascertain who in fact operates them would be impracticable, if not impossible, at a time when many vehicles are parked. *We think the rules and regulations of the Boston Traffic Commission * * * were framed and intended to cover and make punishable any violations of secs. 31 (5), 19 and 17 (4) by the owner of a registered vehicle, whether the particular violation or violations were by the owner or were by a person allowed, permitted or suffered by the owner of any vehicle registered in his name* in any street, way, highway, road or parkway under the control of the city of Boston. In a word this case is one of the unusual instances where a person at his peril must see to it that the rules and regulations are not violated by his act or by the act of another. *The reported evidence established a prima facie case which was not met by evidence offered by the defendant*" (Emphasis added.)

In both of these instances the issue was whether or not the City had made out a prima facie case and because of the posture taken by the defendants in these cases the Courts held that a prima facie case had been made out.

It is the contention here of the defendants that they find no fault with the statute as such, but that in order to properly answer the charges levied against them which encompasses approximately 11,000 plus tickets and since the inception of these lawsuits, considerably more.

In order to ascertain who was in actual operation of the automobile they would have to know where the violation was committed and at what time. The Court believes that this is a

proper request and that the City must furnish this information to a defendant so that if a defendant does have a proper defense which can be asserted, it should have the opportunity to do so.

Since the City elected to stand upon its position that the information furnished under these computer punch outs is sufficient to meet the requirements of a prima facie case, the Court has no alternative but to strike Count I of the complaint for failure to sufficiently set out a cause of action as required under the rules of our Court.

With respect to Count II which is a complaint for a declaratory judgment praying for an interpretation of Chapter 27, paragraph 364 of the Municipal Code of the City of Chicago, the Court feels that Count II is a case of actual controversy and is properly pleaded under Section 57.1 of the Civil Practice Act, Illinois Revised Statutes (1971), Ch. 110, sec. 57.1 and accordingly states that judgment be and the same is hereby entered pursuant to section 57.1 of the Civil Practice Act of the State of Illinois constituting Chapter 27, section 364 of the Municipal Code of the City of Chicago in making binding declarations of the rights of the parties hereto as follows:

a) Chapter 27, section 364 of the Municipal Code of the City of Chicago creates the presumption that the registered owner of a vehicle parked in violation of a traffic ordinance of the City of Chicago was in possession of the said vehicle on the date and at the time and place of such violation.

b) That the presumption created by Section 364 is rebuttable and may be rebutted by a showing by the registered owner that at the time and place and the date of the violation, the vehicle was in fact not in possession of the registered owner.

c) Pursuant to Chapter 27, section 364 of the Municipal Code of the City of Chicago, the defendants are not responsible for parking ordinance violations involving vehicles registered in their name while such vehicles were in the possession and under the control of customer-lessees of the defendants.

APPENDIX D

STATE OF ILLINOIS
COUNTY OF COOK } ss:

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
Municipal Department, First District
Traffic Division

No. 67 MC 102415
CITY OF CHICAGO,
a Municipal corporation,
Plaintiff,
vs.
HERTZ COMMERCIAL LEASING CORP.,
Defendant.

No. 67 MC 102416
CITY OF CHICAGO,
Plaintiff,
vs.
AVIS RENT-A-CAR SYSTEM, INC.,
Defendant.

No. 67 MC 102417
CITY OF CHICAGO,
Plaintiff,
vs.
CHRYSLER LEASING CORPORATION,
Defendant.

Consolidated
No. 68 MC 50305

AMENDED COMPLAINT

Count 1

Now comes the City of Chicago, a Municipal corporation of the State of Illinois, by its attorney, Richard L. Curry, Corpora-

tion Counsel of the City of Chicago, and complaining of the defendants, Hertz Commercial Leasing Corp., Avis Rent-A-Car System, Inc. and Chrysler Leasing Corporation, states as follows:

1. That the plaintiff is a municipal corporation of the State of Illinois, and the defendants Hertz Commercial Leasing Corp., Avis Rent-A-Car System, Inc. and Chrysler Leasing Corporation, are corporations licensed to do business in the State of Illinois.

2. That the defendants are the registered owners of the vehicles bearing State of Illinois license plate numbers for the year 1966 as listed in Column Five of Exhibit A, which is attached hereto and made a part hereof. The last figure in Column Five being the year of the license registration, to wit: 6-1966.

3. That the said vehicles were parked in violation of the Traffic Ordinances of the City of Chicago, as listed in Column One of Exhibit A; and that each offense occurred in the City of Chicago, County of Cook and State of Illinois.

4. That the specific offense is listed by chapter, paragraph, and sub-paragraph number in Column Two of Exhibit A; Column Two has seven digits. The first two digits indicate the chapter number. The next three digits indicate the paragraph number. The last two digits indicate the sub-paragraph number. If there is no sub-paragraph it is indicated by two zeros. The specific paragraph alleged to be violated is printed verbatim in Exhibit B, which is attached hereto and made a part hereof.

5. That each offense occurred on the date listed in Column Six of Exhibit A. The first two digits in said column indicate the month, the second two digits the day, and the last digit indicates the year. The digit in the seventh column is for computer purposes only.

6. That Column Four of Exhibit A lists the City sticker number for the vehicles parked in violation of the Traffic Ordinances of the City of Chicago. If there was no city sticker on the vehicle the space in Column Four is blank.

7. That Column Three of Exhibit A lists the court date which was written on the original parking summons and that said summons was placed on the vehicle.

8. That the defendants did not appear on the date set forth in said summons; that a follow-up notice was mailed to the registered owner, respectively, with a second court date thereon; and that said defendant did not appear on the date set forth in said notice.

A. That there was in full force and effect the following ordinance of the City of Chicago:

> PRESUMPTIONS) Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor. City of Chicago, Traffic Regulations, Chapter 27, Paragraph 364.

10. That the offenses chargeable to the vehicles registered in the name of the defendants total as follows:

Hertz Commercial Leasing Corp. — 5,879:
Avis Rent-A-Car System, Inc. — 4,895;
Chrysler Leasing Corporation — 2,493.

WHEREFORE, the City of Chicago, plaintiff, prays for a judgment against

1) Hertz Commercial Leasing Corp., defendant, in the sum of $88,185.00 plus cost of this suit;
2) Avis Rent-A-Car System, Inc., defendant, in the sum of $73,425.00 plus cost of this suit;
3) Chrysler Leasing Corporation, defendant, in the sum of $37,395.00 plus cost of this suit.

Count II

Now comes the City of Chicago, by its attorney, Richard L. Curry, Corporation Counsel of the City of Chicago, and complaining of the defendants, allege as follows:

1. This is a proceeding for a declaratory judgment in a case of actual controversy under Section 57.1 of the Civil Practice Act (Ill. Rev. Stat. 1969, ch. 110, § 57.1).

2. That the defendants, Hertz Commercial Leasing Corp., a corporation, Avis Rent-A-Car System, Inc., a corporation, and Chrysler Leasing Corporation, a corporation, are at this time and were at the times hereinafter mentioned, corporations licensed to do business in the State of Illinois and were doing business in the City of Chicago.

3. That at the times hereinafter mentioned Chapter 27 § 364 of the Municipal Code of the City of Chicago was in full force and effect which stated:

> "Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor."

4. That there are currently approximately eleven thousand (11,000) parking tickets outstanding for parking violations of the cars of the defendants.

5. That it is probable that many, if not all, of the parking tickets were issued while the respective cars were in the possession of lessees of the defendants.

6. That the aforementioned Chapter 27 § 364 of the Municipal Code of the City of Chicago imposes liability on the registered owner of a vehicle for parking violations.

7. That a similar ordinance was considered in the case of *City of Chicago* v. *Crane*, 319 Ill. App. 623 (1943) and the Illinois Appellate Court, in relying on *Commonwealth* v. *Ober*, 286 Mass. 25 (1934) indicated that proof of the illegal parking of the vehicle, and the ownership of the vehicle is all that is necessary to make out a prima facie case.

8. That the proof of lack of control of the leasing agreements of a vehicle cannot be asserted and is not admissible as a defense.

9. That an actual controversy exists between plaintiff and defendants.

WHEREFORE, plaintiff prays for a declaratory judgment declaring:

That under Chapter 27 § 364 of the Municipal Code of the City of Chicago the registered owner of a vehicle parked in violation of the provisions of any ordinance of the City of Chicago prohibiting or restricting parking shall be responsible for such violation and subject to the penalty therefor and that under said ordinance it shall not be a defense that said owner was not in possession of the vehicle at the time of the violation.

CITY OF CHICAGO
a Municipal Corporation, Plaintiff
By /s/ IRWIN COHEN
RICHARD L. CURRY
Corporation Counsel of the City of Chicago

511 City Hall
Chicago, Illinois 60602
744-4881

STATE OF ILLINOIS
COUNTY OF COOK } ss:

IRWIN COHEN, Assistant Corporation Counsel, being first duly sworn, on oath, deposes and states that he has read the foregoing Amended Complaint by him subscribed and the same is true to the best of his knowledge and belief.

/s/ IRWIN COHEN

Subscribed and Sworn to before me this 12 day of November, 1971.

/s/ FRANK HUBER
Notary Public

(SEAL)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-319, No. 78-320

HERTZ COMMERCIAL LEASING CORPORATION,

Petitioner,

v.

CITY OF CHICAGO,

Respondent.

AVIS RENT A CAR SYSTEM, INC. and CHRYSLER LEASING CORPORATION,

Petitioners,

v.

CITY OF CHICAGO,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
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Attorney for Respondent.

DANIEL PASCALE,
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Assistant Corporation Counsel,
Of Counsel.

Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

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Petitioners,

v.

CITY OF CHICAGO,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

REASONS FOR DENYING THE WRIT

I.

VICARIOUS LIABILITY OF THE KIND PERMITTED BY THE ILLINOIS SUPREME COURT'S INTERPRETATION OF THE ORDINANCE HAS BEEN HELD CONSTITUTIONAL IN A CONSISTENT LINE OF SUPREME COURT OPINIONS.

The Illinois Supreme Court interpreted the Chicago parking responsibility ordinance* here at issue as creating vicarious liability. Under the ordinance as interpreted, the owner is legally responsible for parking violations committed with his automobile, even if another person was operating the vehicle at the time. Below, petitioners challenged that interpretation of the ordinance, but in this court they claim that as interpreted, the ordinance violates due process, at least as far as car rental companies are concerned.

But the validity of laws establishing vicarious liability of a property owner for illegal acts committed with his property by another is recognized beyond question. "It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it.

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* Municipal Code of Chicago, Illinois, ch. 27, sec. 27-364:
"Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefore."
The text of the ordinance is incorrectly quoted in the briefs of both petitioners with the addition of the word "presumptions," a word which does not appear in the text of the ordinance. Avis Pet. 2, 3; Hertz Pet. 3, 4.

. . . [C]ertain uses of property may be regarded as so undesirable that the owner surrenders control at his peril." *Van Oster* v. *Kansas,* 272 U.S. 465, 467 (1926). In *Van Oster,* the owner's automobile was used with her permission but without her knowledge or authority for transporting illegal liquor. The Supreme Court upheld against a challenge on Fourteenth Amendment due process grounds the Kansas statute by which the innocent owner was required to forfeit the vehicle because of its use for an illegal purpose.

The *Van Oster* court noted that a vicarious liability statute is a "device consonant with recognized principles." 272 U.S. at 468. Similarly, this court has frequently approved a variety of other statutes making one person liable for unauthorized and illegal acts of others, even when the penalty has been a criminal conviction with the possibility of a jail sentence. Two such examples are *United States* v. *Dotterweich,* 320 U.S. 277 (1943), and, recently, *United States* v. *Park,* 421 U.S. 658 (1975). In both cases this court upheld the convictions of corporate presidents for their companies' failure to observe the sanitation requirements of the Food, Drug and Cosmetic Act, despite evidence that the executives did not authorize, and in fact had no knowledge of, the conditions resulting in the charge. In contrast to the local court schedule of fines of $3-$20 in the present case, the potential liability in *Park* and *Dotterweich* was imprisonment of up to one year and a $1000 fine.

Similarly this court upheld a New York statute that created civil liability for an owner of an automobile involved in an accident, even if the car was driven by another and the owner not present, if the owner had given the driver permission to use the automobile. *Young* v. *Macsi,* 289 U.S. 253 (1933).

The petitioners here are owners who happen to be in the business of leasing automobiles to others. Leasing does not insulate them from liability when an automobile is used illegally. A lease arrangement did not prevent the forfeiture of an owner's yacht in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 633 (1974). There, the yacht was operated by lessees pursuant to a lease, but the lessees used it without authorization and without the lessor's knowledge to import marijuana. The Supreme Court held that the yacht could be declared forfeit under a statute which subjected to forfeiture any vessel used to transport illegal drugs. In upholding the statute's validity, this court stated it agreed with the proposition that

> "... a long line of prior decisions of the Court establish the principle that statutory forfeiture schemes are not rendered unconstitutional because of their applicability to property interests of innocents." 416 U.S. 680. "The innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense." 416 U.S. 683.

The present case does not merit the court's review because the Illinois Supreme Court recognized and followed these acknowledged principles and because the principles are so well established. The Illinois Supreme Court referred to the Supreme Court's opinions cited above and properly recognized the petitioners were no different than those other innocent owners upon whom the hardships of vicarious liability fall to accomplish a public purpose. 375 N.E.2d 1290-91, 71 Ill.2d 345-7; Avis Pet. Apx. A9-A10; Hertz Pet. Apx. 9a-10a. The Illinois Supreme Court, in finding the ordinance valid, did not depart from this court's decisions on this subject. Similarly no purpose would be served by reexamining at this late date the concept of vicarious liability which has roots in the ancient common

law concept of deodand and which has been reaffirmed in 1974 in *Calero-Toledo* with the dissent of but one currently sitting justice.

Nor do the variety of state parking liability statutes and the diversity of state court interpretations of them require this court's attention.* The states under our federal system are permitted to find solutions to problems such as parking in ways seeming most appropriate according to each state's own lights. This is permitted as long as constitutional rights are not infringed, and as this court has frequently held, the imposition of vicarious liability—Chicago's solution—is not contrary to the constitution.

II.

THE ORDINANCE'S IMPOSITION OF LIABILITY UPON OWNERS RATHER THAN OPERATORS MEETS THE REQUIREMENTS FOR DUE PROCESS ARTICULATED BY THE SUPREME COURT.

Although there is "no closed definition, for the law on the subject is neither settled nor static," *Morissette* v. *United States*, 342 U.S. 246, 260 (1952), three elements are necessary if vicariously punishing one for the acts of another is to be consistent with due process. The Illinois Supreme Court's judgment properly affirms the presence in this case of the three elements: A. The offense punished is one against the public welfare; B. The penalty is small; and C. The defendant stands in a "responsible relation" to the public danger.

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* Some of these cases are cited at Avis Pet. 5 n.4 and in the opinion of the Illinois Supreme Court. 375 N.E.2d 1289-90; 71 Ill.2d 342-5; Hertz Pet. Apx. A6-A8; Avis Pet. Apx. 6a-8a.

A. Parking Violations Offend The Public Welfare; Enforcement Is Impracticable Without Vicarious Liability.

The number of parking violations committed daily, the inconvenience and danger they create and the real difficulty in enforcing parking laws supply the classic description of a public welfare offense. Mr. Justice Frankfurter defined the offenses for which vicarious liability is permissible:

> "The purposes of this legislation thus touch phases of the lives and health of people, which, in the circumstances of modern industrialism, are largely beyond self-protection. . . . The prosecution . . . is based on a now familiar type of legislation whereby penalties serve as effective means of regulation. Such legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in a responsible relation to a public danger." *United States* v. *Dotterweich*, 320 U.S. at 280-1.

The application of such policy considerations to the parking problem in Chicago makes clear the necessity of the ordinance making owners liable for parking offenses. Parking violations are a major problem, both upon the streets and in the courts. By far the largest number of court cases filed in Cook County, Illinois (the judicial jurisdiction for Chicago) are parking violations. In 1966, the year the instant case was filed, more than 1,100,000 complaints alleging traffic violations were filed in the Circuit Court of Cook County. 1966 Report of the Administrative Office of the Illinois Courts. (Some 13,000 of these, more than 1% of the total, were violations alleged to have been committed with automobiles owned by the three petitioners in the instant case.) Of course, more than a million traffic citations represents an equal number of violations resulting in incalculable problems. These range from such minor offenses as overstaying a parking meter to parking a vehicle in such a way as to block access to pedestrian crosswalks, fire hydrants, fire escapes and emergency exits.

It is impossible for municipal authorities to, in the first instance, identify the actual driver of the car who parked the vehicle in violation of the law. The city's only practical recourse is to issue notices of violation to the person in whose name the automobile is registered. If the owner may not be held vicariously liable, the prosecution would be required to be commenced against the operator. But, to require cities to proceed against the actual operator interposes a second layer, making prosecution in most cases difficult or impossible. Often, the *owner* fails to respond to violation notices even when he is thought to be primarily liable. There is nothing which supports the belief that an owner will be forthcoming with information implicating another person in the commission of an ordinance violation.

Even when the owner furnishes the name of the alleged driver it presents more practical difficulties and results in substantial delay. First, the city must contact the registered owner; second, the city must await the owner's answer as to who was the actual driver at the time of the violation; third, the city must obtain jurisdiction over the person the owner says was the driver at the time of the violation (an insurmountable problem for out-of-city and out-of-state drivers); fourth, the city must await the purported driver's response; fifth, not only must the city prove the violation in fact occurred (a fact to which the complaining police officer must testify no matter who is the defendant), but must also prove that the accused driv-

er was actually the person driving the automobile at the time it was parked in violation of the law. The latter is virtually impossible to prove since the complaining officer did not see the car being driven, but only observed the car in a stationary position parked in violation of the law. Finally even if judgment is obtained by default or otherwise against an out-of-city or out-of-state driver, collection of the fine may be uneconomical because of the small sum involved.

As a practical matter, then, if a city could only prosecute the actual operator of the vehicle, there would be virtually no convictions for parking violations among the one million violations observed each year. The only practical solution is the liability of the registered owner.

Thus, enforcement of the parking laws is seriously hampered without vicarious liability, and it is just such a minor offense which is contemplated in the term "public welfare offense."

B. The Penalty Is Small.

In describing the kinds of offenses in which strict liability is imposed, this court has stated that the "penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation." *Morissette,* 342 U.S. at 256.

Thus, one factor permitting the imposition of liability based on ownership, alone, of illegally used property is the probability that no exorbitant penalty is extracted. This is particularly true of parking tickets.

Petitioners, however, add together all parking tickets incurred with vehicles owned by them in the last twelve years and complain of the two million dollar fine they may suffer. But this overlooks the small fine imposed for any single offense. As petitioners themselves point out, local court rule sets the usual fine at $3 to $20, depending on the violation. Hertz Pet. 11 n.14. City ordinance limits the penalty for any ticket to a $200 fine.* The validity of an ordinance should not turn on the number of separate violations a single offender may accumulate.

But no aggregation of fines and no *de hors* record references to newspaper scofflaw and pretrial detention stories can transform a Chicago parking ticket conviction into a jail sentence. Jail is only a possibility for those who contemptuously fail to pay fines. The standard bail for parking violations has been set by court rule at $35.** Jail (and such is the case only if bond cannot be met) is not a practical possibility except for the hardest-core scofflaws.

The true perspective of this parking ticket case is to be found in comparing a $20 fine with the possible year imprisonment in *Park* and *Dotterweich* and the forfeiture on a $19,800 yacht in *Calero-Toledo.*

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* Municipal Code of Chicago, Illinois, ch. 27, sec. 27-363:
"Every person convicted of a violation of any of the provisions of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than two hundred dollars for each offense."

** Rule 528(a) of the Rules of the Illinois Supreme Court (Ill. Rev. Stat. 1977, ch. 110A, par. 528(a)): "Bail for offenses . . ., including ordinance violations, punishable only by a fine which does not exceed $500 shall be $35 cash."

C. Owners, Including Rental Companies, Stand In A "Responsible Relation" To The Offense And Offender.

In vicarious liability offenses based on ownership of property, the law presumes the owner has at least some control over use of the property. It has been expressed in several ways. Mr. Justice Frankfurter called it a "responsible relation to a public danger." *Dotterweich,* 320 U.S. at 281. It also has been stated that the defendant must be in a "position to prevent the violation," *Park,* 421 U.S. at 671, "with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities." *Morissette,* 342 U.S. at 256. The penalty should "serve as effective means of regulation." *Dotterweich,* 320 U.S. at 281.

But the burden is on the owner to prove he does not stand in such a "responsible relation" and that he cannot exert any control. This court stated that a constitutional defense is available to *"an owner who proved . . .* that he had done all that reasonably could be expected to prevent the proscribed use of his property." *Calero-Tolero,* 416 U.S. at 689, emphasis added. In that case the defense was not available because the owner

> "voluntarily entrusted the lessees with possession of the yacht, and *no allegation has been made or proof offered* that the company did all that it reasonably could to avoid having its property put to an unlawful use." *Ibid.* at 690, emphasis added.

Petitioners never made the allegation or offered any proof at trial that they had done all that was possible to control, prevent or reduce their customers' parking violations. The hyperbole and repetition of petitioners' briefs are no substitute for proof. And whatever arguments about rent-

a-car operations and practices are contained in the petitions are untested at trial. Petitioners presented argument, but no evidence below.

Some of petitioners' arguments do not withstand the slightest scrutiny, in any case. The Avis petition (at 9) claims that no petitioner "knows the person to whom the vehicle is rented." Therefore, it is argued, the companies are in no position to prevent parking violations, to compel assistance in a defense or to seek reimbursement.

Only the naive would believe a rent-a-car company would turn over a $5000 automobile to a person it did not know. Rather, cars are leased only to those who can furnish identification, a license and evidence of financial responsibility, such as a cash deposit or credit card. With this established, there are many conceivable ways lessors can control parking violations. They can decline to rent again to those who have previously violated parking laws with the lessor's vehicles. It is conceivable the rental industry could pool names of frequent violators in the same way the insurance industry keeps track of claimants.

Further, the rental contract, if it does not already, could contain the lessee's agreement to observe parking laws and to appear and defend tickets and could provide for penalties if the agreement is broken. Those penalties could include reimbursement of any fine the lessor pays.

It is not farfetched to believe that rental companies could easily enforce the financial provisions of such agreements. Leasing companies often have extended business arrangements, or billing arrangements or long-term leases with customers, sending bills or credit card invoices long after the rental is completed. And, of course, where there

is no credit relationship, the company can assure payment by having the customer give a deposit or bond.

Petitioners made no effort to show these steps are impossible or extraordinarily costly. Not having done so, they are in no position to say that the judgment below violates due process by making them liable for violations over which they have no control—a proposition that they argue with vigor but have not established.

CONCLUSION

For these reasons the petition for certiorari to the Illinois Supreme Court should be denied.

Respectfully submitted,

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September 25, 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-319

AVIS RENT A CAR SYSTEM, INC. AND CHRYSLER LEASING CORPORATION,

Petitioners,

vs.

CITY OF CHICAGO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

PETITIONERS' REPLY MEMORANDUM.

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Respondent's Brief in Opposition attempts to obscure the issue presented. The issue in this case is whether vicarious, criminal or "quasi-criminal" liability may be imposed under an ordinance which, as construed, precludes proof of the defense that the car rental companies did not have a "responsible relation" to the offense; that they were powerless to prevent or correct the violation; and that imposition of the penalty upon them does not and cannot serve a regulatory purpose, but is solely a revenue-collecting device.

The decision below, like decisions in other states relating to identical or similar ordinances (Avis Petition, p. 5), we submit, is in conflict with the holdings of this Court. This Court has

repeatedly held that the enumerated factors are essential to the imposition of vicarious liability and that they may "be raised defensively at a trial on the merits."[1]

These requirements were reiterated in no uncertain terms in Chief Justice Burger's opinion for the Court in *United States* v. *Park, supra.* Applying the principles of *Dotterweich, supra,* the Court stated:

> "The duty imposed by Congress on responsible corporate agents is, we emphasize, one that requires the highest standard of foresight and vigilance, but the Act, in its criminal aspect, *does not require that which is objectively impossible.* The theory upon which responsible corporate agents are held criminally accountable for 'causing' violations of the Act permits a claim that a defendant was 'powerless' to prevent or correct the violation to *'be raised defensively at a trial on the merits'.* . . . If such a claim is made, the defendant has the burden of coming forward with evidence, but this does not alter the Government's ultimate burden of *proving beyond a reasonable doubt* the defendant's guilt, *including his power,* in light of the duty imposed by the Act, *to prevent or correct the prohibited condition.*" (421 U. S. at 673) (Emphasis added.)

Respondent seeks to avoid the effect of *Park* by reliance on this Court's earlier decision in *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U. S. 663 (1974). *Calero,* however, was a forfeiture case in which, as Mr. Justice Brennan's opinion makes clear, the regulatory purpose served is manifest and indisputable: (1) the forfeited article was entrusted to the malefactor in a personal transaction where the owner had opportunity to inquire as to the character of the bailee and the use to which the vehicle was to be put; and (2) forfeiture of the vehicle served the obvious purpose of preventing its repeated use as an instrument for the prohibited activity.

1. See *United States* v. *Park,* 421 U. S. 658, 673 (1975); *United States* v. *United States Gypsum Company,* 46 U. S. L. W. 4937 (U. S. June 29, 1978); *Morissette* v. *United States,* 342 U. S. 246 (1952); *United States* v. *Dotterweich,* 320 U. S. 277 (1943).

Mr. Justice Brennan's opinion in *Calero* expressly recognizes that "it would be difficult to reject the constitutional claim . . . of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for, in that circumstance, it would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive." (416 U. S. at 689-690).

It is precisely that principle which is presented by the present case in which the thrust of the decision below is that a penalty may be imposed without allowing proof of the facts that (1) as is evident to anyone who has ever rented a car, there is nothing whatever that the car rental company can do to withhold a car from persons who may park overtime, and (2) collection of fines from car rental companies—involving aggregate penalties of millions of dollars[2]—cannot possibly serve to discourage violations of parking regulations.

The City would escape the fatal consequence of this constitutional requirement by the astounding assertion that it is immaterial, because petitioners never "offered any proof at trial" to establish the defense. (Br. in Opp., p. 10.) Of course petitioners have never offered proof at trial. The reason is simple: There has been no trial. The case was decided by the trial court on the pleadings. It was decided in favor of petitioners. The trial court dismissed Count I of the Complaint, which sought to recover fines, and granted a declaratory judgment in petitioners' favor on Count II, ruling that car rental companies are not liable merely as owners. This ruling was reversed by the Illinois Supreme Court which ruled, as a matter of substantive law, that petitioners never will have the opportunity to prove by evidence that they are powerless to prevent the violations and that no regulatory purpose is served by imposing a penalty upon

2. Respondent refers to the "two million dollar fine" defendants may suffer (Br. in Opp., p. 9). Actually, the penalties will be much greater.

them. Its ruling holds that only two possible defenses are available—that the violation did not occur, or that the defendant was not the owner of the vehicle.

The facts which this Court's decisions make indispensable to the constitutionality of the ordinance are, therefore, by the decision of the Supreme Court of Illinois, made irrelevant.

At a minimum, therefore, review by this Court is required in order to enforce the fundamental constitutional principle of vicarious criminal liability mandated by this Court's decisions, by affording petitioner an opportunity to prove the defenses to which they are constitutionally entitled. The state court cannot constitutionally dispense with proof of the "responsible relation" and regulatory purpose essential to the validity of a conviction under the ordinance.

Respondent makes no argument directed to the situation of one of petitioners, Chrysler Leasing Corporation. (See Avis Petition, p. 15.) None of respondent's arguments as to the relationship between the owner and the person committing the violation has the slightest application to Chrysler Leasing. Chrysler leases fleets of vehicles to car rental companies. It has nothing to do with the subsequent rental of cars to the operators who commit the violations. Not only does it have no "responsible" relation to the offense—it has no relationship whatever. Nothing could be clearer than that holding Chrysler personally liable can have no regulatory purpose or effect. For this reason alone the application of the ordinance sanctioned by the decision below violates the constitutional principles enunciated by this Court.

But even as to the other petitioners it is nonsense to assert, as the respondent states, that the car rental company "knows" the persons to whom the vehicles are rented in any sense in which "knowledge" is relevant here. The thousands of necessarily speedy, impersonal transactions in which a car rental company engages daily—transactions necessarily consummated in a few

moments' time[3]—are vastly different from the case of an individual lending his car to a friend or relative, as well as from the leasing of a pleasure yacht, involved in *Calero-Toledo, supra,* which obviously affords a realistic and practical opportunity and occasion for inquiry as to the character and purposes of the lessee. As the concurring opinion in that case emphasized, "The lessee of the vessel was, of course, no stranger." (Concurring opinion of White, J., 416 U. S. at 692.) The car rental company, on the other hand, cannot possibly know or consider the likelihood that the operator will violate the law. To insist on some standard of "care" addressed to that likelihood would be simply to require "that which is objectively impossible." (*United States* v. *Park, supra* at 421 U. S. 673).

Respondent's other speculations as to how car rental companies could deter the commission of parking violations are equally far-fetched. This Court is invited to sustain the ordinance on the ground that car rental companies could engage in a nationwide blacklist of all car renters as to whom a notice of parking violation has been received by any company—and this without even the entry of a judgment against the individual who is asserted to have committed a violation. The impracticality—not to mention the probable illegality—of such a method of conducting the car rental business hardly requires comment. Equally impractical is the suggestion that the car rental companies can simply pay the fine and "bill" the operator of the car or require a "cash deposit." The car rental company has no notice of an alleged parking violation until long after the renter has turned in the vehicle, settled his bill, and departed. In Chicago, the car rental company receives no notice of the alleged violation until almost two months after the event. The possibiiity that the car renter will reimburse the company is remote—and in any event, neither he nor the company will have had an opportunity to contest the frequently erroneous charge of law violation. (See Avis Petition, p. 9.)

3. Cf., the television ads featuring a well-known football hero and emphasizing the rapidity of the rental transaction, upon which the success of the car rental service is based.

There is no basis in this case for a rational belief that the ordinance as applied to car rental companies has or can have any conceivable regulatory effect. The constitutional requirement is that even more than a rational belief must exist; *Park* indicates that to impose vicarious criminal liability it must be proved beyond a reasonable doubt that the defendant had the power to prevent the violation. (*United States* v. *Park, supra* at 421 U. S. 673.) Since car rental companies have no such power, the obvious effect of the ordinance is precisely the opposite of a "regulatory effect;" its only effect is to advise operators of rented vehicles that they can violate the parking laws with impunity, thereby increasing rather than reducing violations.

As respondent's brief makes entirely clear (Br. in Opp., pp. 6-8), the true objective of the ordinance is simply to make it convenient for the City to add to its revenues by collecting parking fines, and to do so without the necessity of even proving that the violations actually occurred (since it is obvious that the car rental company is in no position to contest the alleged violation).[4]

The decisions of this Court permit no such justification for the infliction of penalties upon innocent persons who have no means of preventing the offenses at which the penalties are aimed. The ordinance, as construed by the Illinois Supreme Court, falls outside the "limited circumstances" (*United States* v. *United States Gypsum Co., supra* at 46 U. S. L. W. 4941) in which strict criminal liability is permitted. Certiorari should be granted in order to prevent the erosion of this fundamental constitutional principle by municipalities seeking convenient means of using the penal process to raise revenues.

4. Although the fines involved represent large sums of money, and obviously constitute an attractive source of revenue to the City, respondent's brief completely obscures the issue by implying that "there would be virtually no convictions for parking violations among the one million violations observed each year" (Br. in Opp., p. 8) unless the principle of liability asserted in this case is sustained. The fact is that these are *not* convictions of violators for parking violations. The issue in this case is not whether the City may proceed against violators of the parking laws, or even whether it may impose vicarious liability on individual owners who lend their cars and may stand in a "responsible relation" to the offense. The only issue is whether absolute vicarious liability may be imposed on car rental companies.

CONCLUSION.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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